

THE WORKER AND THE STATE

WAGES, HOURS, SAFETY AND HEALTH

BY

FRANK TILLYARD, M.A., M.Com.,

*Barrister-at-Law ; late Vinerian Scholar, Oxford University ; Professor
of Commercial Law at the University of Birmingham ;
Chairman of Courts of Referees for the Birmingham
District, and a Chairman of Trade Boards*

AUTHOR OF

*Banking and Negotiable Instruments, Introduction to Commercial
Law, Industrial Law*

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PREFACE

THIS book was written two or three years ago for inclusion in a series which came to an untimely halt. Its original scope was limited by the general plan of that series. It has been revised and brought up to date, but no material alterations have been made in the treatment of its subject.

The book deals, broadly speaking, with the interference by the State in the relationship of employer and employed for the purpose of securing the health, safety and general well-being of the latter class. Besides treating of health and safety on a wide basis it comprises the law as to the fixing and payment of wages, as to hours of labour, and as to compensation for accidents. The subjects of State Insurances and Trade Union law are purposely omitted. The treatment is historical and critical, as well as expository, and Reports of Departmental Committees on the working of the Truck Acts and the Workmen's Compensation Act, Annual Reports of the Chief Inspector of Factories, and various local Reports have been utilised. The Report of the Cave Committee on the Trade Boards Acts only appeared as the book was passing through the press, but its Summary of Recommendations will be found in the Appendix.

It is hoped that the grouping of a large number of Acts of Parliament and Statutory Orders in four main sections on Wages, Hours of Labour, Safety and Health will do something to avert the very real danger in a subject of this kind of not being able to see the wood for the trees. The book is not intended as a detailed work of reference on the lines of my *Industrial Law*, but an effort has been made to give a full and accurate account of existing law in a readable form. Omissions and inaccuracies are sure to be found, and readers and critics will be doing a service in pointing them out.

FRANK TILLYARD

*The University,
Edgbaston, Birmingham.
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SECTION I

INTRODUCTORY

CHAPTER I

THE GENERAL RELATIONSHIP OF EMPLOYER AND WORKMEN
APART FROM STATUTORY INTERFERENCE

CHAPTER II

EXPERIMENT IN INDUSTRIAL LEGISLATION

CHAPTER I

THE GENERAL RELATIONSHIP OF EMPLOYER AND WORKMAN APART FROM STATUTORY INTERFERENCE

THE main subject of this book will be the explanation and discussion of the lines on which the State by express parliamentary enactment has intervened in the conduct of industry and imposed statutory obligations for the most part on the employer, but also to a subsidiary degree on the workman. This interference by Parliament is commonly called industrial legislation. But in England law is much older than legislation, and the relationship between employer and workman is even to-day in fundamentals a matter of law as distinct from legislation, though, of course, the term 'industrial law' includes all current industrial legislation. A preliminary warning must be given as soon as such a term as industrial law is introduced. However convenient such terms as industrial law, commercial law and the like may be, no lawyer exercises them without the same sort of feeling that a sensitive historian has for the terms 'modern' and 'ancient' history—namely, the sense that law cannot be cut up into small pieces and labelled. The law as to employer and workman is for the most part the general law of contracts as applied to this particular relationship. Apart from legislation, employer and workman are just two persons who have made a bargain which the law will enforce. So far as they have stated expressly the terms of the bargain the law will give effect to its terms on the same principles and to the same extent as in the case of other bargains.

It is true that employer and workman seldom, if ever, provide expressly for all the eventualities of actual life, and that many terms of a contract of service are known as implied terms, and implied terms in a contract of service will necessarily differ from the implied terms in another kind of contract, such as a contract of sale. The respective duties which under the contract of service are imposed on the two parties to it are almost always matters of implication, and from time to time are settled by decisions of the Courts given in disputed cases, so that a body of precedents

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or case law has been gradually built up as regards contracts of service, and these decisions which are special to contracts of service can be separated from decisions on other kinds of contract, and can conveniently be given a distinct name, but this does not impair the general statement that the law of employer and workman is part of the general law of contracts.

The contract of service may be made verbally or in writing, or partly in one way or partly in the other way. We may even say that verbal expression is not necessary for the whole of the contract, and that many terms may be left to be inferred from the conduct of the parties. For instance, a foreman who is in want of an extra labourer, goes to the gate of the works and finds there a group of men waiting for a possible job. He picks out the most likely-looking man, and tells him that he can have a job. The man has been out of work for some time and asks no questions, and simply goes in with the foreman, who sets him to work. There has been an offer of work and an acceptance, and in law there is a contract of service. The man will probably ask his mates what the hours and wages are, or he will wait till pay day and find out by experience. If he is dissatisfied the workman will leave, but otherwise he will stay on, and it will be on the terms which have actually been enjoyed by him. A month later the workman may be paid five shillings less than his due wages, and may have to take his employer into Court to obtain his wages. The Court will not say that the wages have not been fixed, and that the employer may pay anything he likes, just because nothing was said about wages when the contract was first made, or because there has been no verbal expression as to the wage agreement since the contract was made. The conduct of the parties will have fixed the rate of wages and those wages must be paid until a fresh agreement has been made between the employer and workman. In other cases, the workman, when engaged, will ask what his wages are going to be, and the foreman replies that he will pay him what he proves to be worth. The man is then on trial, and after a few days the foreman tells him his rate, or pays him what he thinks he is worth, and if the workman accepts it, then the rate of wages is fixed, and is binding on both sides until a fresh agreement is made.

At works where the engagement of new workmen is made through a works labour bureau, or in any other systematic manner, a card record will probably be kept by the employer on which will be entered the date of engagement, the class of work to be performed, and the wages to be paid. If the engagement card is

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countersigned by the workman there is a written contract of service on those terms and, even if it is not so signed, the record card enables the employer to give such clear evidence in any dispute that the workman's evidence would have to be very strong to upset it.

There is one exception to this general rule, and it is that where the contract is for a period of service which exceeds a year, or is for a year's service from a future date, then under the terms of an old statute (Statute of Frauds, date 1682), the terms of the contract can only be proved in Court by evidence in writing signed by the party to the contract against whom the action is being brought. In practice this means that the contract must either have been made in writing, or its terms must subsequently have been reduced to writing and substantiated by the signature of the party to be charged therewith. A written agreement usually needs a sixpenny stamp, but there is an exception where the agreement is for the hire of a manual workman.

In accordance with the English theory of liberty, which does not expressly confer on a man the right to do certain things, but gives him a right to do anything he pleases, subject to his not injuring the community, or interfering with the rights of his fellow men, an employer and workman may agree to any terms they please so long as this private contract (a) does not amount to a private repeal of the terms of an Act of Parliament which is intended to be binding on all persons; or (b) is not 'against public policy.' The technical term to express the right of individuals to make a bargain in contravention of an Act of Parliament is known as the right of 'contracting out.' It may be said generally that statutes which impose a penalty on an employer for a definite act or omission, such as for instance, keeping a young person at work for more than five hours without half-an-hour's interval for a meal, or leaving a dangerous machine unfenced, cannot be evaded by any agreement between the employer and the workman. Thus, under the Trade Boards Acts there is a penalty payable by an employer who pays less than the minimum wage, and no contracting out is allowed, though under the original Act of 1909 contracting out was expressly allowed by written agreement during the period of limited operation. The Wages (Temporary) Regulation Act, 1918, which also imposed a penalty on an employer who failed to pay a prescribed rate under the Act, made the position clear by express enactment in the following words: 'an Agreement for the payment of wages in contravention of this section or for abstaining to exercise any right of

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enforcing payment of wages in accordance with this section shall be void.' The inelasticity which this salutary rule might in certain circumstances create can easily be cured by other devices such as 'permits' for the infirm under the Trade Boards Acts, and exemptions and relaxations from certain sections of the Factory Act which the Home Secretary can allow by special order. Where, however, the Statute is not a penal statute but merely makes a statutory alteration in the terms of the contract between the employer and workman, it has been held that, in the absence of direction contained in the Act, an employer and workman are free to make a bargain that the Act shall not apply as between them. For instance under the Common Law a servant is held to take the risk of injury by the negligence of a fellow servant. The Employers' Liability Act, 1880, enacted that a servant was in certain cases to have the same right of compensation against the employer as if the servant had not been in the service of the employer; that is to say, he was to be held in those cases not to have taken the risk of injury by the negligence of a fellow servant. The House of Lords decided that in the absence of an express direction to the contrary an employer and workman could contract themselves out of that Act and regulate their position as to accidents by the Common Law and not under the terms of the Statute.

A contract which is against 'public policy' is rather more vague. A contract of service under which the servant bound himself to do something criminal in his master's service would naturally be against public policy. So also would a contract that the servant should do something which at the time of making the contract might have been legal but which subsequently becomes illegal. A man might hire B to go and work for him in Germany. On war being declared between the United Kingdom and Germany, B's departure for Germany would become illegal and the contract void. The most interesting rule of 'public policy' is that which forbids contracts in restraint of trade. This is a very old general rule of the Common Law, but under certain circumstances it comes into conflict with the very reasonable desire of an employer to protect himself from the competition of his servant after the servant has left his employment, and in the interests of the community an exception has been grafted upon the rule. The presumption is still against the validity of the restraint imposed upon the servant's liberty to do as he pleases after he leaves his master's service, but if the master can prove that the restraint on his servant's freedom which

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he has bargained for with his servant is no more than is reasonably necessary to protect the master's business then the bargain as to the restraint will be given effect to by a Court of Law. What is a reasonable restriction will vary from business to business, and quite a small geographical area within which the restriction is to hold good may be allowed for instance in the case of a milk business, while in the case of a business which manufactured machine guns a world-wide restraint has been held to be reasonable.

The substantial terms of a contract of service are the rate of wages, the hours of labour and the length of service, or if the service is for an indefinite period then the length of the notice required to put an end to the service.

On all these points the employer and workman can, as we have already seen, in general make any individual bargain they please, but for a long time there has been under the Factory Acts a statutory restriction on hours of labour for certain classes, and much more recently under various Acts a restriction in the hours of adult male labour, and these restrictions must be considered in a separate chapter. Also, since the Trade Boards Act, 1909, there have been various restrictions imposing a minimum wage on certain industries, and these again must be considered separately. On the question of length of notice there has been practically no legislation except under the Munitions of War Act, and employers and workmen as a rule do not expressly bargain as to the length of notice, so that the Courts have had to lay down definite rules in certain classes of cases. It is proposed to examine in some little detail the Common Law rules as to length of notice, but it must be clearly borne in mind that these rules only apply in default of agreement to the contrary. For instance, some factory employers give and demand under their agreements with their workpeople a fortnight's notice, which is unusually long, while others put up notices saying that no notice will be given or required.

Where nothing is expressly arranged between the parties to a contract of service the old Common Law rule was that the hiring was for a year and could only be terminated at the end of the year. The advantage of this rule in husbandry is obvious, as the master's plans might be seriously upset if his servants could leave him just before the harvest. Hiring fairs were commonly held in the autumn, earnest money was given to bind the bargain, and after its acceptance the servant was bound to his master for a year. From husbandry this custom spread to industry, and

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there is evidence that yearly hirings from Martinmas to Martinmas in the pottery trade were customary down to comparatively recent times. The terms under which domestic servants are still engaged show that originally their hiring was also by the year, as their wages are generally yearly wages. This industry is a good example of how in practice the system of yearly hirings began to break down. At some time or other a custom grew up under which a domestic servant came to give and take a month's notice. If one may hazard a guess, the monthly notice came in with the payment of monthly wages. The Common Law has a doctrine that a party to a contract cannot perform part of it and demand a *pro rata* payment without the consent of the other party. There is a comparatively modern case of a ship's mate who was hired for a voyage at a lump sum for the voyage. In the middle of the voyage he threw up his position and made himself generally useful for the rest of the voyage. It was held that he had no claim to the whole sum fixed, as it had not been earned, nor to a proportionate part of it, as the contract was what the lawyers call an indivisible contract, nor to compensation for services rendered after resignation as they were voluntarily rendered. Probably the yearly hiring, as it involved no current expense for food and lodging, was originally treated as an indivisible contract and the wages were paid in a lump sum at the end of the year. As opportunities of spending money became more frequent the demand for payments on account would develop, and monthly payments and monthly notices would become customary. While industry borrowed in certain cases from these yearly hirings, in other cases where the servant did not live with his master, something much simpler was possible, and the term journeyman suggests a hiring by the day. Where work was given out to be done by the piece, it might be doubtful whether there was a relationship of master and servant, or of 'independent contractor.' Traces of this distinction occur in the definition of workman which was originally adopted in the Employers and Workmen Act, 1875, and which has since been incorporated in other industrial legislation. The important part of that definition is the inclusion within it of a manual worker who 'has entered into or works under a contract with an employer, *whether the contract be a contract of service, or a contract personally to execute any work or labour.*' The journeyman, and the piece worker who contracts to do work personally but is not in service with the employer, both suggest a state of industry in which the worker is only partially dependent on the employer

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of the moment, and is under no necessity to take a whole-time engagement with one employer. The introduction of the Factory system brought into prominence the class of worker who worked for one employer and did nothing else, and who did not live with his master. In this case yearly payments were out of the question, and though a great deal can be said for monthly payments from a social and moral point of view, it is quite evident that a weekly wage and a weekly payment were convenient both for employers and workpeople, and they are now practically universal. Even where the worker is a piece worker, and the unit of work takes more than a week to perform, a weekly payment on account is customary. From a reservation of weekly wages the law will presume an indefinite hiring which can be terminated by a week's notice on either side. In certain trades, such as the building trade, a workman may be engaged for a particular piece of work the duration of which is not indefinite. In such trades there is not a reservation of weekly wages but of hourly wages, and the notice to leave is assessed in hours, and at the present time the rule in the building trade is two hours' notice on either side, terminating at the end of a day. Whatever may have been the custom in the early days of factories, a weekly wage for manual labour is now usually a wage paid in return for a definite number of hours' work, and in one sense there is little distinction between a weekly wage and an hourly wage, as the one may be connected with the other by the simple process of dividing or multiplying by the number of hours normally worked in the week. Nevertheless, the idea of a weekly wage is useful from the social point of view, and when the hours in the engineering trade were recently reduced by agreement from 53 hours per week to 47 hours per week, the men's Society (A.S.E.) stipulated that there should be no alteration in the weekly wage, so that the same sum was paid for 47 hours work as had previously been paid for 53 hours work. The engineers' rate is sometimes expressed as so much per hour, but this experience shows that it was in essence a real weekly wage. The A.S.E.¹ are fully alive to the advantage of a fixed weekly wage, and if any of their members work for an employer whose standard week is less than the normal, say 44 hours, they insist on the same payment for 44 hours as for 47 hours. This principle does not apply when men in an emergency are put on short time. It is rather curious that a society which sets such store by the weekly aspect of its wage should prefer the system of 'no notice on either side,' in place of the customary week's notice. The explanation apparently is that if a man

¹ Now the A.E.U. (Amalgamated Engineering Union).

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hears of a particularly good opening he likes to be able to secure it at once, and feels that if he has to work a week's notice the job may not be kept open for him.

The position of a piece worker varies a good deal according to circumstances. If he is a home worker he seems to be in the position of an independent contractor and each giving out of work is a separate contract, and there is no obligation on either side to enter into future contracts. It is obvious that the question of notice does not arise. A home worker often takes out work from more than one firm, and in such a case any system of notice would be impracticable. The worker has, of course, bound himself to finish the work actually taken out. Where the piece of work is done on the employer's premises, a different set of considerations come into play. Occasionally the work is done under conditions which are substantially the same as when work is done at home, that is to say, the piece worker looks in to see if there is work to do, does it at his own pace, and when he has done it is free to ask for another job or not as he may please; but instances of this are now very rare. Where these very casual and haphazard conditions obtain, it would presumably be held that each giving out of work constituted a separate contract, and neither of the parties would be bound to give out or accept work in the future. As a rule an employer's standing charges are nowadays so heavy, and operations are so linked up, that the regularity of attendance of piece workers is just as essential as that of time workers, and they are 'clocked in' like time workers and expected to be as regular in attendance as time workers, and the piece workers expect to be provided with a full day's work on every working day, and put forward claims for 'waiting time' if continuous work is not forthcoming. Under these circumstances their contracts of service are presumably as continuous as those of time workers, and in matters of notice they stand on the same footing as time workers. Piece work is then used as a system of remuneration which acts as a stimulus to production, and working hours, overtime rates, and length of notice are the same for piece workers as for time workers.

It is quite clear from this historical treatment that notice of some length or other is an implied term of the contract of service, and that, if the parties wish the rule to be 'no notice on either side,' they must make an agreement to that effect, but apparently such agreements have become sufficiently common for the idea to have got about that silence as to the length of

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notice implies that no notice is required. There has recently been a case in the High Court on these lines. In November, 1917, a manufacturer of women's blouses verbally engaged a woman as machinist at a weekly wage of 35s. Nothing was said as to notice to be given by either party. On Monday, 14th January, 1918, the woman failed to appear, and later the employer found that she had on that day gone to a new situation. The employer took proceedings against her for leaving her work without notice. The magistrate decided that as there had been no agreement whatever as to notice, no notice was required, and he dismissed the case. The High Court decided that the magistrate was wrong. They held that unless there is an express agreement to the contrary there is implied in every contract of service a term that notice shall be given by one party to the other before the contract can be put an end to, the length of such notice to depend on the circumstances of the case.¹

If the contract of service lasts for any length of time, it is quite likely that its terms or some of its terms will be varied. The principle to be applied here is quite simple. All contracts are arrived at by agreement, and can be varied by agreement and by agreement alone. But just as we have seen that some of the terms of the original agreement may have been settled by the conduct of the parties, so variations may be established by conduct. Suppose for instance an employer puts up a notice on a Friday, which is his pay day, that beginning from the following Saturday week his regular working week will be changed from a 44 hour week to a 47 hour week, then all workpeople who with knowledge of the notice present themselves for work on that Saturday will be taken to be coming to work on the terms of the notice, and to have agreed to the proposed variation. On the other hand the employer may have preferred to call his workpeople together, and after explaining his reasons, get their express consent to the variation. Theoretically a fresh contract is being made, and the variation cannot be made to take effect, except by express consent, within the period required to put an end to the existing contracts. Thus where a week's notice on either side is required, a notice put up on a Friday to take effect on the following Monday would not be effective to alter the workers' rights within a week of the Friday unless the workers, for fear of dismissal, waived their strict rights. The workers' rights to propose variations are in theory just the same as the employers' rights. If the workers want higher wages, their correct procedure

¹ *Payzu v. Hannaford, Labour Gazette*, June, 1919.

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from a legal point of view is to 'put in their notices' and couple this with the expression of a willingness to go on working after their notices have expired, if the rise of wages is conceded. Here again it is open to the employer to waive his rights and pay the higher wages at once. The question of waiver of rights is quite simple to write about, but often presents considerable difficulties in a Court of Law. This will be referred to again when the question of 'suspension from work' is discussed. One further warning should be heeded. As we shall see later, questions of management are decided by the employer, and by the employer alone, unless he has voluntarily delegated such questions to a works committee or similar body. Variations in matters of management can therefore legally be made by the employer without the consent of his workpeople and without notice of any specified length, though, as workpeople are extraordinarily conservative and sensitive on such matters, prudence may suggest another course.

Besides the terms of the contract as to wages, hours, and duration which may be settled by express agreement, or conduct, or even the custom of the trade, there are other matters which can be called 'duties' or 'implied terms of the contract,' as they are implications arising from the relationship of master and servant. It will be best to begin with certain correlative duties of the employer and the workman. The workman must be ready to work and to continue at work until the contract is at an end, while the employer is under a similar duty to find work for the workman and to continue the employment until lawfully put an end to. The workman's breach of duty may take at least three forms. There may be an absolute refusal to work, which amounts to putting an end to his contract of service or to leaving without notice. The employer in those circumstances is entitled to sue his workman for damages, and if the obligation was to give a week's notice, the damages would be a week's wages. In many instances workmen give up their work without notice, but the employer takes no proceedings for breach of contract and simply fills the vacancy, and this tends to obscure the true legal position. A second class of case occurs where the workman is absent from work through illness or other sufficient reason. Here there are two variations. If the workman does not tell the employer why he is absent then he has failed in his duty and, for all the employer knows, the failure is a wilful failure, and the employer can in some circumstances elect to treat the unexplained absence as a reason for dismissal without notice, and

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can fill the vacancy. Or possibly the workman might under these circumstances be precluded by his silence from saying that he had not left. If the workman notifies the reason, then the contract of service is not terminated by temporary incapacity to work arising from illness or injury or other sufficient reason, and there is merely a suspension of the contract, and the employer must allow the workman to resume his work when he is able to do so. It is clear that when an employer is bound to treat absence from work as a mere suspension of the relationship, he can put an end to the relationship altogether by giving notice of the proper length. The third class of case occurs where the workman comes late or leaves early, and, though generally ready to work, does not present himself for work for the full working hours of the week. Here the question is largely one of degree. It is, of course, always open to the employer to give a week's notice to a workman for any reason, good or bad, but the point now being considered is under what circumstances irregularity of attendance is a reason for dismissal without notice, or for proceedings for damages for breach of contract. It is manifest that irregularity in a stoker or a charge hand is more serious than in an ordinary workman, and that irregularity after warning is more serious than before warning. Deliberate absence for the workman's own pleasure, as for instance, the taking of an afternoon to see a football match, would be such a serious breach of contract as would give the employer the right to determine the contract of service at once. No hard and fast rule can be laid down, and many of the cases really come under another heading, namely, the workman's duty to submit to the necessary discipline of the employer's business. It may be as well to mention here a general principle of the law of contracts. Every breach of contract is theoretically a ground for a claim for damages, though very often the game is not worth the candle, or to use legal phraseology, the cost of the proceedings exceeds the damages likely to be obtained. But only such breaches of contract as go to the essence of the contract are grounds for putting an end to the contract. It is not enough for an employer who wishes to get rid of his workman without notice to be able to prove that the workman has broken his contract, he must go further and be able to prove that the workman's breach of contract is in respect of something that is fundamental to the relationship.

The duty of the employer to find work for his workmen is clear in theory, and a failure on the employer's part is not merely a

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breach of contract for which damages can be obtained, but is of the essence of the contract from the workman's point of view, so that he can elect to treat the employer's failure as a reason for immediately putting an end to the contract of service. The carrying on of a large works may or may not depend on the presence of a particular workman, but the failure of an employer to find work for a particular workman is a denial to that workman of his only means of living. Under the Munitions Acts, which imposed the system of leaving certificates, a provision was inserted that a workman who had no opportunity of earning wages for a period of more than two days should be entitled to a leaving certificate. A question arose in one case as to whether the rule applied when more than two days were missed owing to bad weather. Mr. Justice Atkin, in dealing with an appeal on the point and the question of hardship on the employer, said, 'it is to be remembered that, apart from the question of leaving certificates the masters would be faced with exactly the same problem; because, if workmen chose to leave because they could not get wages, apart from the Munitions Act, there was nothing to prevent their doing so.'

In practice difficult questions arise because employers who find themselves suddenly unable to find work for all their workmen often propose 'suspension from work' as an alternative to actual dismissal, and workmen often waive their strict rights and accept 'suspension.' A recent case arose under the Munitions Acts under which the workmen had a statutory right to a week's notice; but the principle is the same, whether the right to a week's notice arises from the contract of service or from the terms of some special statute. The judgment of Mr. Justice Atkin is worth reproducing verbatim, and it ran as follows:— 'This case raises a point of some importance to employers and workmen. The defendants were aeronautical engineers carrying on business in Manchester and the nine complainants were fitters employed by the defendants in their fitting shop. The complaint by the complainants was that their contracts of service had been determined by the employers without giving them a week's notice or payment of a sum equal to an average week's wages, in breach of Section 23 sub-section 1 of the Munitions Act, 1917. The facts, as found by the Tribunal, are that the employers were working upon large permanent contracts for aeroplanes. On November 8th or 9th, 1918, it was obvious that the work would be diminished, and they accordingly determined that the convenient course to adopt was to invite or require the men in rota-

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tion to go without a week's work and also without a week's pay, the system being that a certain number of men were to 'play,' as it is called, for each week in rotation, and in that way the work would go round. That system is sometimes adopted in such circumstances, an alternative system being to place the men upon shorter hours of work, that system being, I think, the one more usually adopted and certainly likely to cause less friction. The course, however, adopted in this instance was the one I have indicated. The complainants were told that this course had been adopted by the employers, and that they were chosen as the men who should 'play' during the week beginning Monday, November 11th, which was Armistice Day. The men apparently accepted the position; they went away and, so far as appears from the evidence, made no demur at the time. They came back again on the next Monday and resumed their work, and worked during the following week. On the pay day of the week in which they resumed work after the suspension they were offered and received payment for Armistice Day, which was a payment given to all employees of the firm. It was not till two or three weeks after they had returned from the suspension that they made the decision that their contracts had been determined by the action of the employers in requiring them to 'play' during the week beginning November 11th.

'The Tribunal came to the conclusion that the men's contracts of service were in fact determined by the employers, and that the complainants were entitled to receive a week's wages. * I think that that decision is based upon a fallacy. The question as to the determination of a contract of employment is not different from the question that arises as to the determination of any other contract. One party to a contract may by his words or conduct intimate to the other side that he is unwilling to perform the contract as made, and when that intimation is given the other party to the contract has the right to treat the contract as repudiated. If he does so the contract is determined, but it is a wrongful determination, and not a determination by agreement, it is a determination against the will of the other party, although he accepts it as a determination, and he is entitled to enforce all the remedies which the law gives him for breach of that contract. It cannot be said that the contract has been rescinded by mutual agreement. On the other hand, the other party to the contract may refuse to treat the contract as having been determined; he may elect to go on with the contract, and if he does so elect the contract continues with all its rights

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and liabilities. In that case he cannot afterwards say that the contract was determined, because that would be inconsistent with his own conduct in treating it as still continuing. Applying those principles, which are the ordinary principles applicable to contracts according to the English Law of Contract, to the present case, the position appears to be this. I will assume for this purpose—I do not think it necessary to decide it—that there was an obligation on the employers to continue to provide work or to pay wages to their workmen during the period they were in fact in their employment. I am inclined to think that obligation exists and that I should so hold if it were necessary for me to decide the point, but I am only now assuming it. That being the obligation laid upon the employers, their intimation that they did not propose to pay their workmen any wages for a whole week, or to provide any work for them during that period on which they could earn wages, was a breach of the men's contract of employment, and was an intimation by the employers that they did not propose to perform those contracts in accordance with the terms of the contracts, and therefore the workmen affected could treat that intimation as being a determination of their contracts of employment. They could have left their employment, and they could then have made the claim they have made in the present case. On the other hand, the workmen might quite reasonably in their own interests not treat the contracts of employment as determined, and might treat the employment as still continuing. It appears to me quite clear on the evidence that that is what they, in fact, did There is no ground for saying that the employers, in fact, intended that the employment of these men should come to an end, although their conduct would amount to an intimation to that effect if it were so regarded by the workmen. I think it is plain that the workmen never treated their contracts of employment as being at an end, and in those circumstances they cannot now say their contracts had been determined by the employers. It is unnecessary to say more in respect of this case. It would follow, if the assumption that I have made is correct—namely, that the employers were obliged to provide their workmen with work or wages, and had no right to suspend the employment of their men for the period of a week, that they committed a breach of their contracts with their workmen, and for that breach of contract it may well be that the workmen have a remedy in damages, or to recover wages for the week during which they continued to be in the employment of the employers. *Whether or not the workmen are entitled to that*

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remedy, depends of course, on the question whether or not they agreed to the suspension of their contracts of employment.'

Suspension is, therefore, ordinarily a breach of contract which gives the workman the right, if he so pleases, to treat the contract as at an end, but it is not tantamount to a dismissal. But occasionally 'suspension' is only an euphemism for dismissal, and the foreman or employer actually suspends the workman for an indefinite period without any real intention of re-instating him. On sufficient evidence it is always open to the Court to find as a fact that the workman was dismissed without notice, although the terms used may on the surface suggest suspension. Suspension, if definitely accepted by the workman, is a waiver by him for the time being of his right either to have work at which he can earn wages, or to have wages without work. It is, perhaps, well to add that where 'no notice on either side' is a term of the contract, the employer can at any moment cease to provide work, and the workmen can at any moment cease to work, the contract being determinable by either side at will, and these interesting questions are irrelevant.

The next duty of the workman to be dealt with is his duty to be reasonably competent and fit for his work and position. There is a duty on the employer which is practically correlative to this—namely, the duty of the employer to be reasonably competent as an employer in the industry or trade he has chosen. This duty of the employer is in practice not generally recognised until some accident has occurred to the workman through the incompetence or neglect of the employer, and it is better to discuss it in the chapter on an employer's liability for accidents. The workman's duty may be expressed in other words. He does not guarantee that he possesses the degree of competence which the employer is looking for, but he must not represent himself to be a workman of a particular class when he is not in fact a workman of that class. A classic instance is the case of a man who undertook to act as scene painter. He had no qualifications for such a position, and it was held that he could not complain of instant dismissal. So again, if a man takes a place as a millwright, but has had no experience of machinery, the employer may dismiss him without notice. In such cases the employer would very likely have a right to repudiate the contract on the ground of fraudulent representation on the part of the workman.

As a rule an employer is not concerned with a workman's behaviour out of working hours. A man may get drunk every Saturday night, but if he loses no time on Monday morning,

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and is a good workman while at work, there is no breach of duty on the workman's part which justifies the employer in dismissing him without notice for misconduct, though, of course, if he does not care for a workman of that type he can give him notice. But there are certain failings which may unfit a workman for his position. A man may be convicted for dishonesty, but not in his employer's service. He may be in a position of some trust. Is an employer bound to pay such a dishonest workman wages in lieu of notice if he feels it is no longer safe to employ him? Apparently he is not so bound.

The last of these general duties of the workman is to submit to the necessary discipline of his master's business. At the present time, discipline and the making of rules by which it is maintained are a function of management vested in the employer. Before long it is possible that this function will be transferred to a works committee on which workmen will be represented, and may even be in a majority. But this will make no difference in principle, and the workman must still submit to the discipline of the business, whatever its origin and whoever is responsible for its administration. A house divided against itself cannot stand, and a workman who deliberately, on a point of discipline, sets up his will, either against his master's will or the collective will of a works committee, renders himself liable in law to dismissal without notice.

CHAPTER II

EXPERIMENT IN INDUSTRIAL LEGISLATION

THE interference of the State in the interests of the worker has been most marked during the last fifty years, and the pace at which industrial legislation has been produced has been much accelerated since the year 1906.

Quite recently attempts at reconstruction have given a fresh impetus to this legislation. As everyone knows, this is in striking contrast to what was happening in the first twenty years of the nineteenth century. Parliament was then engaged in sweeping away the Tudor Code as to wages and employment, and clearing the way for the fullest application of the prevalent doctrine of *laissez faire*. This is not the place for historical disquisitions, but convenient summaries will be found by the reader in Prof. Sir Wm. Ashley's *Economic Organisation of England*, pp. 161-172, and in the author's *Industrial Law*, Chapter XI. The late Mr. Stanley Jevons, writing in the year 1882 on a subject with almost the same title as this book, namely the State in relation to Labour, devoted about one-fifth of his book to a discussion of the Principles of Industrial Legislation, and arrived at the conclusion, which was at that period an exceedingly bold one, that there were no such principles. 'As, then, in philosophy the first step is to begin by doubting everything, so in social philosophy, or rather in practical legislation, the first step is to throw aside all supposed absolute rights or inflexible principles. The fact is that legislation is not a science at all; it is no more a science than the making of a ship or a steam engine, or an electrical machine is a science. It is a matter of practical work, creating human institutions.' Further, he insists on the obvious truth that 'legislation must proceed upon the ground of experience. Legislation must be Baconian.' He also contends that it is possible for the legislator to resort to direct experiment. Since Jevons wrote these words some striking instances of experimentation are to be met with, and this Chapter is devoted to the subject of Experiment as a Factor in Industrial Legislation. This

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might involve an historical investigation of portentous length, but it will be sufficient to choose outstanding examples from the Truck Acts, the Factory Acts, the Mines Acts, the Workmen's Compensation Acts, and Minimum Wage Legislation. The various points that will be brought out are as follows: the superiority in a general Act of the method of definition over the method of enumeration; the advantages of a central inspectorate; the limits of such an inspectorate, and the new device of internal inspection or self inspection; the danger of legislation on arbitrary lines or not preceded by experiment; the position of mining as a pioneer industry; the tentative introduction of entirely new principles in the spheres of (a) compensation for accidents, and (b) the fixing of wages, followed by much wider applications of these principles; and the devolution by Parliament of the working out of accepted principles to a Government department such as the Home Office.

The first illustrations will be drawn from the Truck Acts. One especially interesting point about the Truck Acts is that they constitute the one exception to the general rule that current industrial legislation is very modern. It is true that the earliest Truck Act now in force is the Truck Act, 1831, but there has been continuous legislation to secure the payment of wages in current coin of the realm and not in goods or other allowances from the year 1464 down to the present time. How the Truck Acts were maintained during the period when the doctrine of *laissez faire* was most powerful is hard to say, except that our legislation is never logical, and that it never seems to have occurred to anyone to question the wisdom from the *laissez faire* point of view of Acts which prevented adult men from accepting their wages in the form of food, clothing or other articles if they wished to do so.

The history of the various Truck Acts illustrates a very usual method of parliamentary experimentation. An Act is passed for one trade and when it has been found to be useful it is extended to other trades. Then a consolidating Act is passed which proceeds by *enumeration*. It is then found that the enumeration is incomplete and finally, and in the case of Truck Acts, rather late in the day, the device of a *general definition* is thought of, under which all industries are brought in, and any necessary exceptions are specially provided for. If there are omissions these will be found not in what is included, but in what is excluded.

The actual stages were mainly as follows: The Act of 1464 secured the payment of wages in lawful money to carders, spinsters and all such other labourers as were employed by cloth makers.

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An Act of 1701 extended the principle to woollen, linen, fustian, cotton and iron manufacture. There was a further extension to other trades in 1749 and 1817 in several industries of recent origin and one very old industry which had been overlooked. These industries were the manufacture of articles made of steel, or of steel and iron combined, and of plated articles or of other articles of cutlery. By a later Act of the same year a Truck Act of 1725 applying to woollen manufacture was extended 'to labourers employed in working and getting coal.'

The consolidating Act to which reference has been made was the Truck Act, 1831, which is still law. Section 19 of the Act contained a very wide enumeration of trades, but unfortunately the list was not complete. It was, of course, impossible by mere enumeration to provide for trades or industries which as yet were not in existence, such, for instance, as those depending on a process (e.g. electro-plating) which had not yet been discovered. It was also very difficult to include every known industry. The stock instance of omission is the case of the 'navvy.' During the era of the construction of canals or navigable cuts towards the close of the 18th century a special type of labourer was employed, who came to be known as a 'navigator' or, more shortly, a 'navvy.' Canal construction was not in evidence in 1831 and the navy was not provided for. Almost immediately afterwards came the era of railway construction on a large scale, and the navy appears once more. He was scandalously treated in the matter of truck, and a Select Committee in 1846 recommended the extension of the Truck Act, 1831, to labourers employed to make railways. Nothing, however, was done till the Truck Act, 1887, which introduced a general definition taken from the Employers and Workmen Act, 1875, covering all persons (with the exception of domestic servants) engaged in manual labour who are either working under a contract of service or a contract personally to execute any work or labour.

Legislators, great and small, are now thoroughly aware of the dangers of attempting to make general provisions by enumeration, however careful. For instance, Trade Boards which legislate on matters of wages for particular industries and have power to make different rates for different classes, do not attempt to cover the ground by a mere enumeration of classes, but first legislate for all workers other than those put into special classes, and then fix special rates for the special classes. By this means there are no workers who are entirely overlooked.

In 1831 it was not yet realised that workers were very often

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not in a position to assert their legal rights, and no provisions were inserted in the Truck Act of that year to facilitate the enforcement of the Act. The inspectorate under the Factory Act was set up two years later, and as we shall see elsewhere was a great success. The Act of 1887 remedied this defect also and imposed on the Inspectors of Mines and Factories the duty of enforcing the Acts in factories, workshops and mines.

The Truck Act of 1896 affords us an example of a piece of legislation applying to almost the whole of industry, and preceded by practically no experimental legislation. It does not deal with truck proper, namely the deduction from wages of the price of goods supplied by the employer to the wage earner, but with certain analogous deductions—viz., fines levied for breaches of rules, deductions for bad work and spoilt material, and charges for the supply of materials, tools, standing room, power, etc. Ten years later a departmental Committee of the Home Office was appointed to consider the working of the Truck Acts. Its recommendations are mostly concerned with the Act of 1896 and cover the drastic revision of its provisions as to fines, the repeal of its provisions as to deductions for bad work and spoilt material, and a drastic curtailment of the provisions as to charges for materials, tools, etc. The Committee reported in 1908 and a Bill embodying its recommendations was promised in more than one Session before the War, but has not yet been introduced. A detailed discussion of the Truck Acts will be found in Section II, Chapter III.

The first experiment in legislation for factories was the Health and Morals of Apprentices Act, 1802. It applied to all cotton and woollen mills and cotton and woollen factories in which three or more apprentices or twenty or more other persons were at any time employed. It was mainly concerned with parish apprentices for whose board, lodging and clothing the employer made himself responsible, but it also contained provisions of more permanent interest for the lime washing and ventilation of the buildings. It depended for its enforcement (a) on a voluntary and neutral inspectorate, and (b) on the promise to informers of half any penalty imposed. This scheme for a voluntary inspectorate was not a success. In the first place the inspectorate were chosen by the local justices in session, and if they neglected to make appointments there was no central body to force them to act. In the second place, even if an inspector was appointed he was necessarily a local person, and unless he was of exceptional strength of character, he was bound to be exposed to great

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pressure from men of his own class and standing to do as little as possible. By 1833 the lesson had been learnt that an inspectorate to be effective must be professional and not amateur, and must in general be the servants of the central Government and not of a local authority. By the Factory Act of that year four inspectors were to be appointed by the Government to be under the direction of one of the principal Secretaries of State. This experiment was a great success, and the existence of a central inspectorate ensures not only efficient administration, but also the accumulation of the knowledge and experience on which further legislation can be based.¹ With one or two exceptions the history of factory legislation is singularly free from false steps.

The provision of a central inspectorate is now part of the administration of most permanent statutes dealing with industry, such for instance as the Trade Boards Acts and the National Insurance Acts. The Workmen's Compensation Act stands on a different footing. Under the former Acts a definite duty is put upon the employer, regardless of the workman's desire in the matter. The master must fence certain machinery, provide proper ventilation, pay a minimum wage, put insurance stamps on a card, etc., whether the workman demands it or not, and the State provides an inspectorate to see that the employer does his duty. On the contrary, under the Workmen's Compensation Act, no duty is imposed on an employer to make any payment by way of compensation until the injured workman has made a claim. The whole basis of the Act is the assertion by the individual workman of his rights, and what the State does to make the Act effective is to provide simple and inexpensive machinery for settling disputed claims, and some supervision over agreements under which a workman's rights under the Acts are commuted for a lump sum.

A recent instance of an Act imposing a general duty on an employer and not providing an inspectorate to see that this duty is observed can be found in the Wages (Temporary Regulation) Act, 1918. The reason for this was, no doubt, the temporary character of the Act. As a partial substitute for an inspectorate with power to take proceedings for breach of the Act, it was expressly provided that proceedings against an employer might be instituted by or on behalf of a Trade Union, and any party to

¹ The report of an inspector is specifically made the basis of any Special Order by which the Home Office extends the scope of the Particulars Section of the Factory Act (see page 26).

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such proceedings might appear by an officer of a Trade Union. The present writer has been in a favoured position to note the working of legislation on these lines. As chairman of the local tribunal trying offences under the Act in a large industrial area he has tried many cases brought by Trade Union officials, but he has only tried one case brought by a non-unionist, and that broke down through the absence of the kind of evidence which only a Trade Union secretary can collect. In other words, the non-unionist, in regard to whom the employer was most likely to fail in his duty to pay the prescribed rate of wages, was virtually deprived of his rights under the Act because there was no inspector regularly employed in investigating the wages books of the employers. From the writer's experience in the same area as chairman of courts of referees investigating claims to donation and unemployment benefit it was quite clear that the Act was being constantly evaded, and that through the ignorance and sometimes the carelessness of the workers concerned, many of whom are trade unionists, no proceedings were taken against employers in default. In fact, it may be taken as axiomatic that, except under the Workmen's Compensation Act, the aggrieved workman for various reasons does not play any direct part in making industrial legislation effective.

Experience under the Trade Boards Acts entirely bears this out. Practically the whole of the proceedings are taken on the initiative of the Ministry of Labour, acting through its investigating officers. These officers often receive valuable hints from Trade Unions or other sources. But the power given by the Trade Boards Act, 1909, to the aggrieved worker to make a complaint to the Trade Board that he or she is not in receipt of the minimum rate is hardly ever exercised, although the usual result, if the complaint were well founded, would be that proceedings would be taken on behalf of the worker. It is impossible, therefore, to exaggerate the practical importance of the central inspectorate in administration.

The failure of the voluntary and local inspectorate under the Act of 1802, and the immediate success of the very limited experiment of a paid and central inspectorate tried in 1833 have had the most far-reaching consequences. Though the value of a central inspectorate can hardly be exaggerated, it must also be borne in mind that the duties of inspectors are constantly being increased, and that there is a limit to the number of inspectors which can be maintained with due regard to economy, and a limit to the number of visits which a business can bear without dislocation.

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The latest experiment is to be found in the Special Order for the regulation of factories and workshops in which the manufacture or decoration of pottery is carried on. The Order is an extremely detailed one and some description of it will be found on pp. 268-73, but the only clause which we are now concerned with is clause 27, which sets up a system of internal inspection. A person is to be appointed whose duty it is to see to the observance throughout the factory of the regulations, to carry out systematic inspection of the working of all the regulations in the departments for which they are individually responsible. He must be a competent person and must keep in the factory a book in which must be recorded daily any breach of the regulations or any failure of the apparatus, together with a statement of the steps taken to remedy defects or to prevent the recurrence of breaches of the regulations. Accurate extracts, clearly and legibly expressed must be made of these entries once a week, signed by the factory occupier and displayed during the following week in a conspicuous place in the departments to which they refer, and copies of all such extracts must for the same time be displayed in a conspicuous place in the mess rooms.¹

To give all the instances of experiments in factory legislation, and recite the extensions of the successful experiments to other trades would be to write a history of factory legislation from a particular point of view, and to deal with one matter at an inordinate length. It will be sufficient if two or three more examples are given. In the case of the Particulars section (sec. 116) of the Factory and Workshop Act, 1901, we have an excellent example of what may be done to facilitate legislation when an experiment has become an assured success. Instead of its being necessary for Parliament to pass fresh legislation for each extension, power was given to the Home Secretary to legislate by Special Order.² What this means in practice the following figures will show. Originally only textile factories and workshops were under the Particulars section, and they numbered roughly ten thousand. The power to extend the operation of this section was created in 1895, and in 1903 somewhat more than three thousand non-textile works had been brought under this section. Ten years later no less than 27,000 non-textile works had been brought under the section and the number is still increasing.

¹ The Report of the Chief Inspector of Factories (1919) discloses a limited success of this experiment.

² For details of legislation by Special Order, see *Industrial Law*, pp. 22-3.

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It may be worth while to set out in some detail the stages of this experiment. The introduction of the piece work system into factories at once gave opportunities to unscrupulous employers to raise questions as to the amount and description of work given out and the agreed remuneration for it. The advantage of a ticket containing particulars of these matters—viz., the quantity given out, the description of the work, and the rate of remuneration, soon became apparent, and as early as 1824 Section 18 of the Arbitration Act of that year provided "that with every piece of work given out by the manufacturer to workmen to be done there shall, *if both parties are agreed*, be delivered a note or ticket in such form as the said parties shall mutually agree upon, and which said note or ticket, in the event of dispute between the manufacturer and workman, shall be evidence of all matters and things mentioned therein, or respecting the same."

In 1845 two Acts were passed, some parts of which are still law, making these tickets compulsory in the hosiery trade and the silk weaving trade. In the case of the Silk Weavers Act, full particulars of the warp and weft were required and the price in sterling money agreed on for executing each yard imperial standard measure of 36 inches of such work in a workmanlike manner. The terms of this last provision suggest that manufacturers had a variable yard! The Factory and Workshop Act, 1891, extended the compulsory giving of particulars to all the pieceworkers in textile factories, but drew some minor distinctions between worsted and woollen weavers (not in the hosiery trade), cotton weavers and other classes of workers. Then in 1895 power was given to the Home Secretary, on being satisfied *by the report of an inspector* that those provisions were applicable to any class of non-textile factories or workshops, to apply them by Special Order to any such class, subject to any necessary modification. Special Orders have been made in the case of textile workshops, and about forty different trades (see pp. 85-6). Many other examples of extension by Special Orders under various sections of the Factory Act might be given, as the power to make Orders is contained in no less than forty-five sections of the Act and has been exercised in respect of thirty-three sections.

The most recent experiment in factory legislation is the direct outcome of war conditions. The first impulse at the outbreak of war was to relax the factory rules, and to urge everyone to make a great spurt. Had the war been a short one, this policy might have paid, but as soon as it became obvious that the war was going to be a long one it was seen that sustained production

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at a high level could only be maintained by taking more care of the workers, and seeing that meals were taken in comfort, that leisure time was spent in wholesome recreation, and generally that work was done under as good conditions as were possible. Welfare workers were appointed in almost all large munition factories, and the general health and comfort of the workers—and especially of the women workers—were looked after in a way that previously had been known only in a few model factories. This was all done voluntarily, but in 1916 the Home Office obtained the insertion in a miscellaneous Act of a clause¹ empowering it to make Orders making compulsory the provision of certain elementary matters of welfare. So far the Orders made have dealt with such matters as the provision of first aid and ambulance systems in a very important series of works, of protective clothing in certain wet industries, and of cloakrooms for storing and drying clothes. There is a practically universal order for the provision of drinking water, as this must now be provided in all factories and workshops with twenty-five or more employees. A beginning has been made with orders making the provision of mess rooms compulsory. We may look forward to a gradual but most important extension of these Welfare Orders.

As has been already said, the growth of the Factory Acts was so based on experiment and on official information gradually accumulated through the Central Inspectorate, that false steps have been remarkably few. The one outstanding instance to the contrary is contained in two Acts of the year 1867, the first being the Factory Acts Extension Act, 1867, and the second the Workshops Regulation Act, 1867. In 1861 a Commission had been appointed to enquire into the conditions of employment of children and young persons in workplaces which were not covered by any existing Factory Acts. Five years later the Commission reported in favour of bringing all workplaces under some kind of regulation, and recommended the division of workplaces into two classes according to the number of persons employed. Workplaces in which fifty or more persons were employed were to be placed in the factory class and dealt with on the lines of existing legislation, while the small workplaces were to have a less stringent code of regulations and to be under local instead of central supervision, and the two Acts of the year 1867 were framed substantially on those lines.

Such a dividing line was, of course, an entirely arbitrary line and

¹ Police, Factories, etc. (Miscellaneous Provisions) Act, 1916, Section 7.

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the classification based on it is not a real classification. Its adoption and subsequent rejection should have been a warning to legislators, and we might have been spared the dividing line drawn in the Workmen's Compensation Act, 1897, between buildings thirty feet in height and less lofty buildings. In 1878, when existing factory legislation was consolidated, the numerical criterion was abandoned, and the very real distinction between workplaces where mechanical power is used and those where hand power is used, was generally and permanently substituted for it.

It may be interesting at a time when the coal miners are the pioneers in a campaign for the nationalisation of the working of coal mines to digress and make a list of the experiments which have first been tried with regard to coal mines, and have then been extended or are about to be extended either to other individual industries or practically to the whole of industry.

As early as 1842 the payment of wages to coal miners on licensed premises was prohibited, and subsequent legislation as to metalliferous mines contained a similar restriction. The Payment of Wages in Public Houses (Prohibition) Act, 1883, extended this legislation to all workmen falling within a general definition which is substantially that contained in the Employers and Workmen Act, 1875.

In 1887 coal miners obtained the insertion in the Coal Mines Regulation Act of that year of four sections (sections 12 to 15) providing for the weighing of mineral gotten and the estimation of deductions by two persons, one acting for the colliery company and the other being a 'checkweigher' appointed by and acting for the miners themselves, and for the choosing and payment of such checkweigher. This legislation was amended and strengthened by the Coal Miners (Checkweigher) Act, 1894, and the Coal Mines (Weighing of Minerals) Act, 1905. The Checkweighing in various Industries Act, 1919, applies the same kind of provisions to four specified industries, and to any other industry to which the provisions of the Act may be extended by regulations made by the Home Secretary.

The Coal Mines Regulation Act, 1908, generally known as the Eight Hours Act, prohibited a miner (with the exception of certain classes) from being below ground for the purpose of his work for more than eight hours during any consecutive 24 hours. The Coal Mines Act, 1919, has reduced the eight hour day to a seven hour day. The importance of these two Acts lay in the fact that while the Factory Acts had legislated quite fully in the matter

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of hours for women, young persons and children, there had been no interference with the liberty of adult male labour to work any hours which might be agreed upon. There was one part of the Factory Acts which drew no distinction between adult male labour and other labour—namely, the sections which authorised the Home Secretary to make special regulations for dangerous trades. As a matter of fact, prior to the Coal Mines Regulation Act, 1908, no special regulations were in force limiting the hours of adult male labour, but a most important order made since 1908—namely, the special regulations for the pottery industry, prohibits in certain processes labour by men in excess of certain prescribed hours per week, varying from 48 to 54 hours. There is also now a power to legislate in regard to hours of work for both men and women under the Trade Boards Act, 1918. This Act authorised Trade Boards to declare a normal working day or week and fix overtime rates for work done in excess of the normal hours so fixed. Under this power various normal days, generally $8\frac{1}{2}$ hours or nine hours, are in force in various industries, and normal weeks of 47 or 48 hours. The Trade Boards Act does not, however, prohibit work in excess of the normal day, but only penalises the employer who resorts to it by making him pay higher rates of wages while overtime is being worked. It was generally expected that a Bill for enforcing a general 48-hour week would have been introduced by the Government in the session 1920, but at present this has not been done.

Finally, it may be mentioned that internal or self inspection has long been the practice in coal mines. Attention has already been called to this as a novelty in factory legislation, and up to the present time the regulations for the pottery industry constitute the only example of it. The examination of mines for safety by examiners, foremen and others, who must have definite qualifications for their positions, and who must keep records of their inspections have long been a feature of mining legislation, and though the type of man employed in inspection in mines may differ a good deal from the competent person whose duty it is to see that the pottery regulations are carried out, still the underlying necessity is the same in both instances and has been met by the application of the same principles.

The Workmen's Compensation Act constitutes a good example of the tentative introduction of an entirely new principle into English legislation. The principles governing damages for accidents occurring at work under the Common Law and the Employers' Liability Act, 1880, and those governing compensation

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for accidents under the Workmen's Compensation Act, 1906, will require most careful consideration in a subsequent chapter, and here it will be sufficient to say that up to 1897 no workman injured at his work could claim damages from his employer successfully unless he could show that the injury was due to some negligence on the part of his employer or his employer's servants. In 1897 Parliament enacted a measure which, while it left existing law standing, yet gave compensation for accidents without applying the test of negligence, and substituted for proof of the employer's negligence proof that personal injury by accident, arising out of and in the course of the employment had been caused to the workman seeking compensation.

This innovation was of a very considerable importance and was tried experimentally in the case of employment in or about a railway, factory, mine, quarry or engineering works and certain building operations. It limited the compensation in such a way as to place roughly half the loss on the employer, and half on the injured workman. The Act proved to be a great success and its chief weakness, the arbitrary line drawn in respect of building operations, automatically disappeared when the Act was replaced in 1906 by a general Workmen's Compensation Act, including within its scope all manual workers. This Act of 1906 contained two further experiments which have been the basis of still further legislation. For the first time industrial legislation was extended on a large scale to non-manual workers. It is true that part of the Truck Act, 1896, included shop assistants within its scope, but the Workmen's Compensation Act, 1906, covered all non-manual service the remuneration of which did not exceed £250 a year. This inclusion of non-manual workers proved to be beneficial, and the Health Insurance part of the National Insurance Act, 1911, was drawn on the same lines, but with a lower limit of remuneration, which, however, has recently been increased to the same figure as is given in the Compensation Act of 1906. The Unemployment Insurance Act passed in the current session of Parliament also extends unemployment insurance to non-manual workers whose income does not exceed £250 a year.

The second experiment of the Workmen's Compensation Act, 1906, was to extend its provisions with certain necessary modifications to certain scheduled industrial diseases incurred at work. The scheduled diseases were only six in number, but were of frequent occurrence, and the Home Secretary was authorised to extend the list by Order, and as early as May, 1907, he felt himself in a position to include eighteen minor industrial diseases. Further

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Orders have since been made, and the Act now covers a total of thirty industrial diseases.

Minimum Wage legislation furnishes a second example of an entirely new principle tentatively introduced. The outstanding experiment of recent years is undoubtedly the attempt to fix a minimum wage by law, and to attach a penalty to the non-payment of the statutory wage so fixed. Four main Acts have been passed for this purpose, namely the Trade Boards Acts, 1909 and 1918, the Coal Mines (Minimum) Wage Act, 1912, and the Corn Production Act, 1917. The temporary Acts known as the Wages (Temporary) Regulation Acts, 1918 and 1919, lapsed on September 30th, 1920, and the Corn Production Act was repealed in 1921. The details of this permanent legislation will be a matter for future consideration, and as the Trade Boards Acts, 1909, was the earliest Act and is the basis of the general extension which has taken place, that will furnish practically all the subject matter of the present discussion. For more than a hundred years industry had been built up on the theory of absolute freedom of contract between employer and workman in the matter of wages. The economic weakness of the workman in bargaining with his employer or prospective employer was soon demonstrated, but the long struggle of the workman to establish the right to bargain collectively does not fall within the province of this volume. It is sufficient for the present purpose to make clear two points. In the first place the law never recognised the collective bargain as forming part of the individual bargain between a particular employer and a particular workman, except so far as it was expressly or tacitly incorporated in the individual bargain.¹ An employer who is a member of an Employers' Association which has a collective bargain with a Trade Union is doing nothing illegal in making a contract of service with a member of that Trade Union in flagrant disregard of the terms of the collective bargain. Either party to such a contract can sue the other in a Court of Law and neither can set up the defence that the contract is not in conformity with the collective bargain and neither party can be subjected to any penalty for neglecting to observe its terms. Both parties run the risk of expulsion from their respective associations, but that is not a legal penalty.

¹ In a Scotch case reported in the *Labour Gazette* for April, 1920, p. 208, the judge said, 'Each of the pursuers was separately engaged on a distinct contract between him and the company. They were not suing as members of a Trade Union complaining of a breach of agreement between the union and the employers, but each must be taken to be complaining of a breach of the contract with him as an individual.'

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The second point is this, that the protection, such as it is, afforded by collective bargaining is by no means universal, and in some trades is non-existent or practically non-existent, and even in well organised trades is not nearly so complete as is commonly supposed. Probably this is true of every trade which has ramifications and in which the small employer has still a useful function to fulfil.

An instance which recently came under the writer's own observation in the course of administering the Wages (Temporary) Regulation Act must suffice. A complaint was made to the tribunal by the Brass Workers Society against a firm of brass button manufacturers for non-payment of the prescribed rate. Now the Brass Workers Society and its present secretary both hold very high positions in the Trade Union world, and have held such positions for years, and the society has carried through a scheme of grading which only a very strong and ably conducted Union could operate. Yet at the hearing of this complaint the Trade Union official conducting it opened with the statement that the Union had only just begun to turn its attention to the wages which its members were receiving in outlying industries, such as button making. The actual experience of the tailoring industry under its Trade Board confirms this. In Leeds itself, which is the centre of the industry, and in which a powerful Trade Union organisation has been built up, and in which the economic wage paid by large employers has often been above the Trade Board minimum, infringements of the Trade Board rate are by no means uncommon. It was therefore not surprising to find that the system of individual bargaining, even though tempered to some extent by collective bargaining, brought in its train a sweated or non-living wage, which was the normal remuneration throughout some industries, and in many other industries was to be met with to a larger or smaller degree. It was arguable, of course, that while this might be a necessary consequence of individual bargaining, yet at the same time the price paid was small compared with the benefits which freedom of contract had bestowed in other directions. Anyhow, the proposal to interfere with freedom of contract met with much open hostility in some quarters, and was regarded with a good deal of doubt and suspicion even amongst persons fully alive to the evils which were sought to be abolished. The guidance afforded by an experiment in the Colony of Victoria was not of great value, as the conditions of industry in the United Kingdom were so different from the Victorian conditions. Parliament in sanctioning a limited experiment in fixing minimum

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wages by law proceeded with the utmost caution, and it is worth while to examine in detail the nature of the precautions adopted. Some of the precautions are necessarily permanent measures, as for instance those which insure that proposals shall be known throughout the trade and that every one concerned shall have an opportunity of sending to the Trade Board before its final decision an objection to the proposal. This is a common feature of delegated legislation of any importance, and reference on this point may be made to the detailed statement as to Statutory Orders made after public enquiry in Industrial Law, pp. 24-6. But even here the Trade Boards Act, 1909, proceeded with the utmost caution, for while under the Factory Act the Home Secretary must allow 'at least 20 days' within which persons affected may get copies of the draft Regulations and may lodge objections, the Trade Boards Act, 1909, created a proposal period of three months, which has since been reduced by the Trade Boards Act, 1918, to a period of two months. The really novel precaution was the attempt to get the Trade Board minimum rate into operation by the voluntary acceptance of it by good employers in the trade, aided by the inducement held out to these good employers of having a monopoly of public contracts.

The idea of standardising what 'good employers' are already doing of their own free will had already been accepted by the House of Commons in the fair wages clauses required by resolution of the House of Commons to be inserted in Government contracts. This resolution was passed by the House of Commons on the 10th March, 1909, and the material part of it for the present purpose runs as follows: 'The contractor shall . . . pay rates of wages and observe hours of labour not less favourable than those commonly recognised by employers and trade societies (*or in the absence of such recognised wages and hours, those which in practice prevail amongst good employers*) in the trade in the district where the work is carried out.' That is to say, the House of Commons, even before it passed the Trade Boards Act, 1909, was prepared, and in this it undoubtedly had public opinion behind it, to take the wage of the 'good employer' and make it a compulsory wage in work done under Government contracts. By this device, too, it made it possible to have a compulsory minimum wage for this class of work even in districts where labour was unorganised and there were no recognised Trade Union rates. Under the Trade Boards Act, 1909, the good employer who voluntarily took upon himself the obligation of the minimum rate fixed under the Act was made the starting point for the subsequent extension

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of the minimum rate to all the employers in the trade, good and bad alike. An objecting employer could always be met with the answer—'This rate to which you are objecting is already in operation in your competitors' works.' The machinery by which this position was reached consisted in the intervention of a 'period of limited operation' which could not be less than six months, and might be, if the Board of Trade and subsequently the Ministry of Labour so decided, any multiple of six months, between the time when the Trade Board finally fixed the minimum rate and the time when it became obligatory on all employers in the industry under the Trade Board. There were two main sets of provisions which applied to the period of limited operation. First, employers were allowed to contract out of their statutory obligation to pay the Trade Board minimum rate by written agreements with their workpeople. Even if they neglected to make contracting-out agreements and paid less than the minimum rate, they were merely to be liable to Civil proceedings under which the workpeople could get arrears of wages, and were not to be liable to criminal proceedings and the penalties that accompany them.

In the second place a 'white list' of good employers was made. Any employer might give written notice to the Trade Board by whom the minimum rate had been fixed that he was willing that the rate should be obligatory on him, and in that case he was to be under the same obligation to pay wages at not less than the minimum rate as if the period of limited operation had come to an end by the making of an obligatory order. In other words, he was to be liable to both civil and criminal proceedings if he failed to pay the minimum rate. The inducement held out to the employer to put his name on the 'white list' was that no contract involving employment to which a minimum rate was applicable was to be given by a Government department or local authority to any employer unless he had given to the Trade Board the written notice already described.

When the first four Trade Boards got to work the period of limited operation was perhaps less useful than might have been expected. It is true that no period was ever extended beyond the statutory minimum of six months, but even then the intervention of this period meant that a year or thereabouts elapsed between the proposal of the rate and its being made obligatory on the whole trade. Also during the period of limited operation some employers were paying wages at one rate and others were paying at another rate. This, of course, was nothing new in itself, but

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there was a new and most important factor. The good employer for the first time realised that there was now legislation in existence under which he could be protected from undercutting and his unscrupulous competitors could be made to pay the same rate of wages as he was paying. The result of this was that the good employer became an enthusiastic advocate for the extension of the minimum wage to all employers in the trade. This device of the limited period of operation and the 'white list' may have been essential to the passage of the first Trade Boards Act, but by the time of the second Act it was already felt to be an incubance rather than a protection, and the Trade Boards Act, 1918, put an end to it. This experience under the first Trade Boards Act seems to have a good deal of bearing at the present time on the relative value of Joint Industrial Councils under the Whitley Scheme, which are of course non-statutory, and Trade Boards. As is well known, the Whitley Commission hoped to provide the whole of industry with some means of settling wages and other questions, and roughly apportioned to Joint Industrial Councils such parts of industry as had strong associations of employers and workmen, and to Trade Boards such trades or parts of trades as were less well organised. The agreement arrived at by a Joint Industrial Council has, however, no legal effect, and it is quite evident that so far as employers are concerned there is a growing demand for equality throughout the trade based on a determination which can be legally enforced.

Even if Joint Industrial Councils were given statutory powers and their decisions made legally binding, the difficulty would not be entirely met, as they lack that neutral element of appointed members which in the last resort ensures a definite decision on a Trade Board even when the employers' side and the workmen's side differ as to the minimum rate. The experience of Trade Boards shows the importance of two things, first that means should be provided for coming to a decision, and secondly that when the decision is arrived at it should be applied to all employers of a like grade and not merely to some of them.

In the Appendix will be found an extract from the judgment of Mr. Justice Roche in the case of *Webb v. C. Woodman & Sons*, (3 M.T. reports pp. 208-9,) which shows the difficulties in which the Joint Industrial Council for the saw milling industry found itself involved.

At the time of writing a similar difficulty has occurred, but at an earlier stage, in the road transport industry. The Joint Industrial Council has been considering an application for an

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advance made by the workers' side. The employers' side have replied that they would grant the advance, or, at any rate, some advance, if they had a guarantee that non-federated firms would also give the same advance, but without that guarantee they were not prepared to submit to the undercutting which they felt certain would ensue. For the moment there is a deadlock. The proposal to grant to Joint Industrial Councils powers of fixing wages compulsorily throughout the industry is not, from an administrative point of view, as simple as it seems. There is at present no machinery by which non-federated firms and non-unionist workpeople can receive notice of proposals made by the Joint Industrial Council. In fact, there is no official machinery for drawing up lists of the firms concerned and circulating the proposals and receiving the objections, and no funds for bearing the expense. It would seem that one of two courses must be followed, either official machinery must be created on the lines of the Trade Board Office, or compulsory membership of Employers' Associations and of Trade Unions must be accepted. Compulsory membership of an Employers' Association or of a Trade Union may come in the near future, but it is a matter which has yet not been thought out in detail and it is doubtful whether public opinion is ripe for it in industry as a whole.

The examples given above are not intended to be in any way exhaustive, and the reader who is interested for instance in the subject of legislation by Government departments will find in the sections on Health and Safety many examples of the regulations of dangerous trades under the Factory Act not directly by the Act itself but by Special Order of the Home Secretary.

With regard to false steps the position is simpler. The only important step which had to be retraced was the factory legislation of 1867. The Truck Act, 1896, still awaits reconsideration, but the fact that such reconsideration has been so long deferred proves that the Act was not of the first importance. Of course, many Acts of Parliament have in the last century been passed and repealed, but in the case of industrial legislation the new Act has generally been an Act to consolidate and amend the old law and the old Act has a new lease of life in a modified form.

The Employers' Liability Act, 1880, is an example of a step useful as far as it goes, but not leading to further progress in a direct line.

How long this evolutionary process will go on it is perhaps idle to speculate. The association of workers according to their industries, instead of according to their crafts, would make it

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feasible for industries to be much more self-legislating than they are at present. Again, the abolition of the wage system would naturally render obsolete the most progressive legislation founded on the wage system. A Code of Regulations for Safety and Health would certainly be needed, whatever changes in the social fabric come about, but speculations of this kind are outside the scope of this work. Industrial legislation so far has been distinctly evolutionary, and if and when revolution comes, this legislation will have to take its chance in the melting pot.

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INTRODUCTION

We have already seen that English Common Law still regards the wage bargain as a contract between an individual employer and an individual worker, and that the general policy of the law has been and is to leave to the two contracting parties a general liberty of bargaining, so long as there are no terms against public policy. The bargain so made is left to be carried out in the usual manner and according to the common law view as to the performance of contracts in general, and if there is a breach of contract on either side the State provides Courts of Law in which the rights of the parties can be enforced. But this general statement is of course subject to qualifications. In the first place, English Common Law was not, so far as it dealt with commercial or industrial matters, a coherent body of law grounded on intelligible principles before the time of Lord Mansfield, who was Chief Justice from 1756, and as regards industry it was limited in its provisions by the actual circumstances of industry for the time being. It is roughly true to say that what may be termed the common law view of industrial relationship was most powerful during the hundred years from 1750 to 1850. During that period the old statutory provisions for fixing wages were either practically obsolete or actually dead. There was a statutory protection of the wage earner against the dangers of truck, and as a set off against this the employer's remedy for a breach of a contract of service was far more drastic than the workman's right. In fact, the employer's remedies were somewhat of a penal character. The historical method of approach, though always interesting and educational, in this particular instance lands the reader in a mass of confusing detail, and the stages by which statutory interference has been developed are purely empirical, so that the balance of advantage seems to lie in taking

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the substance of a contract of service and grouping together statutory interferences with the various items of the contract. Thus this section will deal with statutory interferences in regard to wages. The next section will deal with statutory interferences with the hours of labour. Another section will deal with statutory measures in regard to accidents occurring at work. Yet another section will set forth the statutory provisions for the general health of workpeople at work. The present section dealing with statutory interferences in regard to wages will be sub-divided on the same practical lines. In practical life the first step is to fix the rate of wages to apply to an individual worker, the second step is to calculate the wages payable to him on pay day, the third step is to pay him those wages, and in default of payment there is a fourth step—namely, legal proceedings to recover the wages due. At each of those steps experience has shown that there are certain dangers and the legislature has stepped in with an attempt to avert those dangers. At the first stage there is the danger of the sweated or inadequate wage, which has been dealt with by various forms of minimum wage legislation. At the second stage there is the danger that the unscrupulous employer will miscalculate the wages actually earned by the piece worker, and that worker will have no adequate means of finding out the miscalculation. This has been dealt with by the particulars clause of the Factory Act and by legislation setting up checkweighing in various industries. At the third stage there is the danger that an employer may pay in goods instead of cash and may keep back part of the wages as a fine or as compensation for bad work, spoilt material or other matters. This danger has been dealt with by the series of Truck Acts. At the final stage there are the dangers of expense and delay in recovering wages and partial loss of wages in the case of an insolvent employer, and these have been met by various provisions in the Employers and Workmen Act and in bankruptcy legislation.

CHAPTER I

MINIMUM WAGE LEGISLATION

Apart from the Wages (Temporary) Regulation Acts, which expired September 30th, 1920, legislation as to the fixing of rates of wages consists of the Trade Boards Acts, 1909 and 1918, the

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Coal Mines (Minimum Wage) Act, 1912, and Part II. of the Corn Production Act, 1917.¹ The first points to be considered are certain general points as to the policy and scope of these Acts. In all three instances provision was made for setting up certain boards, called either Wages Boards or Trade Boards, composed on the lines of equal representation of employers and workers with a neutral element of appointed members, for the purpose of fixing wages. The preliminary points to be investigated are (a) What body sets up the Wages Board or Trade Board? (b) Has this constituting body a general or limited power of creating Boards? (c)* Are the Boards when set up independent bodies, and if not* completely independent, what measure of control is reserved to the constituting body, or what statutory directions are given to the Boards as to their policy? The answer to these questions differ in all three instances. Before considering English legislation in detail it is worth while to consider two general questions. The first is the mental attitude of employers as a whole to minimum wage legislation, and the second is the extent to which English legislation is indebted to experience elsewhere. Both these questions have a bearing on points (a) (b) and (c) which we have set out to discuss. The English employer is by nature an extreme individualist, but by grace and the pressure of circumstances he has become used to a considerable extent to conferring with the other employers in his trade and to acting in harmony with them. The organisation of workmen in Trade Unions has compelled employers to organise themselves in associations of employers and federations of associations. The typical employer of a generation or two ago had a positive feeling in favour of going his own way and managing his business as he pleased, but he also had a negative feeling expressed in the phrase that he was 'agin the Government.' The positive feeling has been modified by his association with other employers, but that association has, if anything, strengthened his feeling that Government interference in the management of a business is a mistake. Individually he feels himself the equal, and generally the superior, of any Government official, and in association with his fellow employers that feeling is developed. At the present time too the employer is feeling a natural reaction after the War, which brought with it the Munitions Act, 'controlled establishments,' and a vast army of bureaucrats, some efficient and some inefficient. So far as a Trade Board is a body mainly composed of associated employers and associated workmen there is nothing in it which

¹ This Act has now been repealed.

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irritates the employer, and in fact, as we have already seen, most employers welcome a common rule for the whole of a trade. The presence of a small body of outsiders in the persons of the appointed members, who act primarily as conciliators or arbitrators between the two sides, is something to which employers have been accustomed in the course of trade disputes. Legislation on wages by Trade Boards does not to a serious extent run counter to the existing sentiments of the employing class, so long as the legislation is in the hands of the Trade Boards. If the Trade Board machinery were to be manipulated so as to turn the Trade Board into something little better than an Advisory Council, with the real authority vested in the officials of the Ministry of Labour, then the employers would be up in arms in a moment, and the whole scheme might become unworkable. Apparently on an issue of this kind the workers would join forces with the employers, as control 'by industry' is at least as popular with the working classes as control by officials, and probably more so. In discussing the relationship between Trade Boards and the constituting and controlling authority we are dealing with a matter of the highest practical importance.

As regards the second point, it may be said that the general idea of a Trade Board is derived from the Wages Boards which were first set up in the colony of Victoria. These colonial Wages Boards have the duty of fixing 'a living wage,' but subject to an appeal to a judicial body known as the Court of Industrial Appeals, presided over by a judge, and this Court has power not merely to quash a determination made by a Wages Board but also to fix a new rate. The Victorian enactment runs as follows: 'Where any determination made by a Special (Wages) Board is being dealt with by the Court (of Industrial Appeals) such Court shall consider whether the determination appealed against has had or may have the effect of prejudicing the progress, maintenance of, or scope of employment in the trade or industry affected by any such price or rate (of wages) and if of opinion that it has had or may have such effect, the Court shall make such alterations as in its opinion may be necessary to remove or prevent such effect, and at the same time to secure a living wage to the employees in such trade or industry who are affected by such determination.' This, of course, is only a way of limiting the authority of the Wages Board to the fixing of a living wage and making the limitation effective by giving a right to appeal to a judicial body. No English Act uses the phrase 'a living wage,' and the only Act which comes

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near to doing so—namely, the Corn Production Act, qualifies, the direction by inserting the words ‘so far as is practicable.’ Further, in no Act is there any machinery for a direct appeal from the Wages or Trade Board to any outside authority, and though in the case of Trade Boards there is a general supervising authority, that authority has no power to alter a rate fixed by a Trade Board but can only refer the matter back to the Trade Board for reconsideration. To sum up we may say that the idea of a Trade Board or Wages Board has met with a favourable reception largely because of the considerable independence that has been granted to them.

We may now return to the detailed consideration of the constitutional position of these Boards. The Coal Mines (Minimum Wage) Act, 1912, is the simplest of the three cases and can be very shortly disposed of. The Act was passed in an emergency and its object was to get a minimum wage in operation as quickly as possible in the twenty-two districts into which the mining areas of Great Britain had already been divided for Trade Union purposes. The wage-fixing bodies were to be any Joint District Board ‘recognised by the Board of Trade.’ After recognition of the Joint District Board there was no further interference by the Board of Trade. No general deductions are to be drawn from this Act.

Part II. of the Corn Production Act, 1917, will require somewhat more attention. The constituting authority in this case was the Board of Agriculture and Fisheries. Its duty was to establish an Agricultural Wages Board, and in doing so it was to follow the general lines laid down by Section 11 of the Trade Boards Act, 1909, and to choose the neutral element of appointed members on the lines laid down by Section 13 of that Act. When once the Agricultural Wages Board was set up there was to be no further interference by the constituting authority, but Parliament inserted two directions as to their policy. The first direction was that in fixing minimum rates the Agricultural Wages Board should, so far as was practicable, secure for able-bodied men wages which in the opinion of the Board were adequate to promote efficiency and to enable a man in an ordinary case to maintain himself and his family in accordance with such standard of comfort as might be reasonable in relation to the nature of his occupation. The question may be asked, did this give any aggrieved person the right to test the legality of a rate of wages fixed by the Wages Board either on the ground of the inadequacy of the rate to achieve the objects thus set forth or on the ground that the rate is clearly

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in excess of what may be necessary for that purpose? If the application were to quash the rate as inadequate the Board might answer that they had done what was practicable, and it is difficult to imagine a Court of Law going into a question of that kind. If the application were to quash the rate as excessive the answer of the Board would probably be that this provision is manifestly intended to secure that the minimum wages should not be too low. The true interpretation seems to be that this Parliamentary direction was to be borne in mind by the Board in its discussions, and was not intended as the basis of possible appeals to the Courts of Law, and that the Agricultural Wages Board, 'so long as it considered the rate from the standpoint of this direction, was an independent body free of interference from any revising authority. The second Parliamentary direction was that the Board was to secure for able bodied men wages which, in their opinion, were equivalent to wages for an ordinary day's work at the rate of at least 25 shillings a week. Here again the use of the words 'in their opinion' seems to suggest that in any controversy as to whether a rate fixed complied with this direction, if the Wages Board declared that in its opinion it had fixed such a rate, there was no appeal from its decision.

It is obvious that under the Act as to Coal Mines and the Act as to Agriculture there is no power to extend the Acts to other industries. The general Acts under which Trade Boards are being set up for various industries or branches of industries are the Trade Boards Acts, 1909 and 1918, and their provisions enable clear answers to be given to the questions under discussion. Under the Trade Boards Act, 1909, the constituting authority was the Board of Trade, but when the Ministry of Labour was instituted this function of the Board of Trade was transferred to the Ministry of Labour. Only four trades were scheduled for inclusion in the original Act of 1909, but the Board of Trade might make a provisional order applying the Act to any other specified trade if they were satisfied that the rate of wages prevailing in any branch of the trade was exceptionally low, as compared with that in other employments, and that the other circumstances of the trade were such as to render the application of the Act to such trade expedient. In other words, the Act could only be extended to such other trades as in the opinion of the Board of Trade were in whole or in part sweated trades, and even then extension was by Provisional Order. A Provisional Order requires express Parliamentary confirmation before it becomes law, and an opposed Order is referred to a Parliamentary Select

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Committee which acts as a judicial tribunal and hears witnesses for and against the confirmation of the Order. A few years after the Act of 1909 had come into operation the Board of Trade made a Provisional Order extending the Act to some five fresh trades, but during the proceedings before the Select Committee it was forced to abandon one of these trades. Hence under the Act of 1909 the constituting authority had a strictly limited power of creating Trade Boards, and Parliament retained its power of direct interference with proposed extensions.

The Trade Board when constituted under the Act of 1909 was able without the sanction of any other body to bring a minimum rate into limited operation. What limited operation amounted to has already been explained on p. 34, and as limited operation has been abolished there is no purpose in examining it in further detail. The relevant point here is that the constituting body was also the body to decide at the end of the six months of limited operation whether it should make an Obligatory Order or an Order of Suspension deferring the Obligatory Order for at least six months. The grounds for making an Order of Suspension were that the constituting body were of opinion that the circumstances were such as to make it premature or otherwise undesirable to make an Obligatory Order. The constituting body had also the right to direct the Trade Board to reconsider any minimum rate, whether an application had been made for that purpose to the Trade Board or not. As a matter of practice the constituting authority, while limited operation was a part of Trade Board machinery, never made a Suspension Order, and never directed a Trade Board to reconsider a minimum rate.

The provisions of the Trade Boards Act, 1918, in regard to these matters are on very different lines, and show very clearly the influence of the reports of the Whitley Commission. The ultimate recommendation of that Commission was that industries should be grouped in two classes and that the experiment of National Industrial Councils should be tried with regard to industries in which both employers and workpeople were fully organised and that Trade Boards should be formed for all other industries. They also show, as has already been pointed out, that Parliament considered that Trade Boards had so far been a success, and that the extreme caution of the Act of 1909 might be relaxed. Under the Act of 1918 the operation of the Trade Board Acts might be extended to fresh trades by Special Order instead of by Provisional Order. A Special Order has not to be confirmed by Parliament, but need only be laid before each House of Parliament. Within

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the first forty days of the sitting of Parliament either House can present an address to the Crown praying that the order may be annulled and in default of any such address being carried within that period, the Order becomes irrevocable. The class of trades in which Trade Boards could set up now became 'any specified trade as to which the Minister of Labour is of opinion that no adequate machinery exists for the effective regulation of wages throughout the trade, so that having regard to the rates of wages prevailing in the trade, or any part of the trade, it is expedient that the Trade Boards Acts should apply to that trade.' This is very much wider than the old provision with its reference to exceptionally low rates of wages. In fact, if a National Industrial Council were formed for a trade but failed to prove itself adequate to regulate wages throughout the trade, and the rate of wages in fact compared unfavourably with those of other trades, there does not seem any legal reason why a Trade Board should not be set up for such a trade.¹

The Act of 1918 in taking away the period of limited operation abolishes the power of a Trade Board to bring a rate into operation solely on its own initiative. When the Trade Board has finally fixed a rate, its next duty is forthwith to notify the Minister of Labour and to suggest a date from which the rate is to become effective. When the Minister receives this notification he must forthwith take the matter into his consideration, and he can, if he thinks it necessary, refer it back to the Trade Board for reconsideration; otherwise he must make an order confirming the rate, and unless there are special reasons for postponement he must make the order within one month of the receipt of the notification from the Trade Board. The actual notice of the rate goes out to the trade from the Secretary of the Board with a heading which states that the Trade Board has made the rate and that the Minister has confirmed it and has fixed a stated date from which it is to be effective.

The power given to the Minister of Labour to send a rate back for reconsideration might be quite useful where several Boards dealing with cognate trades fixed rates in which there were material differences. For instance, there are some six Boards already dealing with the clothing trades. As a matter of fact they show a natural tendency to adopt the same rates, but if one of the Boards took a very independent line, confusion and friction might easily result and the Minister might feel that his Board might usefully be asked to reconsider the position. Trade Boards, however, feel that they are the possessors of trade knowledge, and that, if there

¹ See however Recommendations (1) & (2) of the Cave Committee set out in the Appendix.

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is to be interference with freedom of contract, the interference of a body of persons interested in and engaged in the trade is far more preferable than the interference of a bureaucratic minister. So far the Minister of Labour has rarely used this power, and probably no minister would voluntarily hold himself out as a Court of Appeal to which the employers side or the workers side of a Trade Board could go whenever they failed to secure what they wanted from the Trade Board. A near approach to an appeal of this kind occurred under somewhat special circumstances in the case of the Lace Finishing Trade Board. During the early years of the War this Board did not meet. The younger and more active workers went into various munition trades, and the older workers who were nearly all home workers were very poorly organised. When the Board did meet, the Trade Board rates were very much below the current rates in other trades and both sides were agreed that very considerable increases would have to be granted, but they differed as to the speed with which it was fair and reasonable to legislate. It was not a case of turning an existing trade rate into a Trade Board rate and so stabilising war advances, but of giving very substantial advances under social conditions which were by no means stable. On the second occasion on which the Trade Board gave an advance the workers' side were so dissatisfied that they appealed to the Minister of Labour to send the matter back to the Board for reconsideration. The Minister confirmed the rate, but asked the Board to meet again at an early date to consider the position. The employers had also had a deputation to the Minister of Labour and naturally when the Board met both sides did their best to give the appointed members the impression that the Minister of Labour was seriously impressed with the views they had laid before him. However, further time had elapsed and the Board was able without great difficulty to give a further advance. It seems quite clear that active and constant interference by the Minister of Labour in the work of rate fixing would not make for the smooth working of the Act.

There is one other provision which gives the Minister of Labour a direct control over Trade Board legislation. It concerns the period which must elapse before a variation in an existing rate can be proposed. In almost every trade an employer enters into contracts to deliver goods at a fixed price over a stated period. If his wages bill is liable to constant fluctuations he finds it impossible or highly speculative to enter into such contracts. The Act of 1918 has more than one method of dealing with this diffi-

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culty. For instance, the Trade Board can fix a rate for a definite period and then at the expiration of the period, unless the Trade Board expressly determines otherwise, the rate so fixed comes to an end. The Trade Board can also fix a series of rates to take effect for successive periods. If, however, a Trade Board merely fixes a rate for an undefined period then the following provision applies. Until the rate has been effective for six months the Trade Board cannot without the consent of the Minister of Labour, to be given on an application made to him by the Board for the purpose, give notice of a proposal to vary the rate, and the Minister must not consent to such an application unless he is satisfied that the special circumstances of the case render it desirable that such notice should be given immediately. An employer can therefore in ordinary circumstances rely on the stability of a Trade Board rate for a period of at least six months, together with the further period necessary to carry through a variation, which may be anything between three and four months.

The third point as to the relationship between the constituting authority and the individual Trade Boards concerns administration. The Act of 1909 in appearance set up a dual authority. Under section 10 any worker or any person authorised by a worker may complain to the Trade Board that the wages paid to the worker are at a rate less than the minimum rate, and the Trade Board must then consider the matter and may, if they think fit, take any proceedings on behalf of the worker. Under section 14 of the Act of 1909 the Ministry of Labour has power to appoint such officers as they think necessary for the purpose of investigating any complaints and otherwise securing the proper observance of the Acts, and such officers are to act under the direction of the Ministry of Labour unless the Ministry place its officers or any of them under the directions of any Trade Board. In practice direct complaints to a Trade Board by an aggrieved worker are exceedingly rare, so that a Trade Board is very seldom in a position to consider whether it will exercise its powers of taking proceedings. In such rare instances as occur the Trade Board finds itself faced with three possible difficulties. In the first place it must make sure of its facts, and the investigating officers appointed under section 14 act under the directions of the Ministry of Labour and not under the directions of the Trade Board. Of course, in ninety-nine cases out of a hundred the request of a Trade Board to have the services of an officer to investigate an alleged infringement will be granted, but there is always the possibility that the hundredth case may involve a

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question of law or policy on which the Ministry of Labour and the Trade Board differ. The outstanding example was a difference that arose between the first Tailoring Trade Board and the Board of Trade. The Trade Board considered that the words used to define the scope of the Board covered the making of water-proofed garments, but the official view was that they did not do so. If the Trade Board had received a complaint from a worker obviously employed on the making of a water-proofed garment and requested the services of an officer to investigate the complaint, the request would almost certainly have been refused. In the second place when the facts have been investigated an opinion must be obtained as to the chances of a successful prosecution of the offender. Here again the solicitors' department of the Ministry of Labour is not part of the Trade Board machinery and is only at its service in such instances as the Ministry may decide. In the third place the Trade Board has no public funds under its control out of which it can defray the expenses of a prosecution. In effect therefore the powers given to a Trade Board by section 10 to take proceedings on behalf of an aggrieved worker are illusory, and proceedings for the enforcement of the Act are almost completely in the hands of the Ministry of Labour. There is a further point which is worth discussion. An employer as a general rule is prepared to observe the determination of a Trade Board if he has an official assurance that such determination is really binding on him, and he will not then go the length of fighting the matter out in a Court of law. Who is the proper person to give such official assurances? Is it the Secretary of the Trade Board giving expression to the view of the Trade Board, or is it an official of the Ministry of Labour giving expression to the view of the Ministry? Until recently questions addressed to the Trade Board were answered by its Secretary after discussion by the Board or an administration committee, while questions addressed to the Ministry were answered by an official of the Ministry and there was no machinery for an exchange of views, or for preventing the expression of different opinions. Now that Trade Boards are rapidly increasing in number and are soon likely to exceed one hundred in number, the right policy for the administration of the Acts is being carefully thought out. In the interests of orderly, systematic and economical administration a good deal of centralisation seems necessary. It is probable that in future all official opinions will in form be the opinion of the Ministry and not of the Trade Board. Such opinions will carry an additional weight as coming from a body which can effectively main-

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tain its opinion by resorting to legal proceedings. But as the Trade Boards have a very strong feeling that in ordinary trade matters their trade knowledge is by far the most reliable source for an opinion, the Ministry will in such matters be in general the channel for the expression of what the Trade Board thinks. A compromise on these lines is probably quite practicable; but on the whole question of administration it seems clear that the desire for order and economy must not result in a bureaucratic system, or the feeling of the employer class, which has already been described, may make the whole Trade Board scheme an endless cause of friction.

We may sum up by saying that in the case of Trade Boards the control of the Ministry of Labour over their legislation is very slight, but that administration is not merely controlled by but substantially vested in the Ministry.

The next point to consider is the composition of Wages Boards and Trade Boards. The Trade Boards Act, 1909, has settled the general form of these Boards. Under section 11 of that Act members representing employers and members representing workers must be appointed in equal proportions. The selection may be either by election or nomination or partly by one method and partly by the other method. In practice so far the method is for the Ministry of Labour to nominate after consultation with the organisations on both sides. There is nothing in the Act to render ineligible either an employer who stands outside the employers' association or a worker who is a non-unionist. In any trade in which a considerable proportion of home workers are engaged provision must be made for the representation of home workers. The number of representative members will naturally vary from trade to trade according to the size of the trade and also according to the number of sections of the trade. To make the position of each Trade Board quite clear a separate set of regulations under which the Board is constituted is drawn up for each Board, though the Ministry of Labour has power, if it pleases, to make regulations to apply generally to all Trade Boards. While the subject of equal representation is being dealt with it will be convenient to mention that the regulations invariably prescribe the method of voting, and that though different methods are adopted for different Boards the unifying principle is that the two sides shall have equal voting power, notwithstanding unequal attendances. The simplest method of securing this is to arrange that the number of persons allowed to vote on each side shall be the number present on the side which has the smaller

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attendance. Where, however, a side is made up of sections whose interests may clash, another system has sometimes been adopted in order to avoid giving undue weight to the opinion of some particular section. For instance, suppose a Trade Board is made up of twenty workers, sixteen employers and four middlemen who act on the employers' side and three appointed members. If there is a full attendance the voting power of the two sides is equal, but if the workers and the four middlemen can come to an agreement they can carry any resolution against the votes of the ordinary employers and the appointed members. The fate of the employers is in the hands of the middlemen and not of the appointed members. To avoid this situation one form of regulations gives the majority of either side the right to claim a vote by sides. In the instance given the joint resolution of the workers and middlemen would be voted against by the employers' side, a preliminary vote of sixteen to four being in favour of that course and it would be voted for by the workers' side, and there being an equality of side votes for and against, the appointed members would have the decision. Where the regulations provide for a side vote unequal attendances on the two sides are immaterial.

The appointed members are, as has already been explained, the neutral element. Their number must be less than half the total number of representative members, but in practice it is very much less than that. The original regulations for the Tailoring Board provided for five appointed members, while the other three original Boards had three appointed members. It has been found that even on large Boards three members may be sufficient, and the original Tailoring Board has recently been reconstituted with new regulations and the number of its appointed members has been reduced to three. The appointed members are selected by the Ministry of Labour and receive fees for their services. In the case of a Trade Board for a trade in which women are largely employed, at least one of the appointed members must be a woman. It is the invariable practice of the Ministry to appoint one of the appointed members to be chairman of the Board and another to be deputy chairman. The Agricultural Wages Board followed closely the lines laid down in the Trade Boards Act, 1909, but the number of appointed members was much larger. This was a necessity arising from its large number of district committees. The Coal Mines (Minimum Wage) Act, 1912, follows the Trade Boards Act in providing for equal representation of employers and workmen, but differs from it in the method

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of constituting the neutral element. Each of the twenty-two Boards recognised under the Coal Mines Act has the right to elect its own chairman, and the constituting authority only comes into play when the two sides cannot agree on a chairman. The chairman is usually a single person, but the constituting authority when appointing may select three persons to act jointly as chairman.

Regulations of the Ministry of Labour also govern the constitution of the District Committees (if any) of a Trade Board. A Trade Board need not establish district committees, but under section 12 of the Trade Boards Act, 1909, it may establish them and the Trade Board settles the areas for which such committees shall act. A district trade committee must consist partly of members of the Trade Board itself and partly of persons not being members of the Trade Board, but representing employers or workers engaged in the trade, and chosen by the Ministry in accordance with regulations made for the purpose. There must be at least one appointed member on a district trade committee, and local employers and local workers must be equally represented, and if there is a considerable proportion of home workers in the district they must have representation. The powers of a district trade committee will be considered hereafter. The practice of Trade Boards in establishing district Trade Committees varies very much, but this can be more conveniently discussed with the question of their powers. The Agricultural Wages Board established thirty-nine district committees.

The powers and duties of Trade Boards and Wages Boards in regard to the fixing of wages must now be considered. It is a definite duty of a Trade Board to fix a general minimum rate of wages for time work in their trade, and it can only be relieved of this duty on making a report to the Ministry of Labour that it is impracticable to fix such a rate. The general minimum time rate is the basis of all further legislation, whether it be for learners, for piece workers, for overtime, or for individual permits. There is, of course, no fixed relationship between a general minimum time rate and the other rates which the Board may fix, but a Board which has fixed a general minimum time rate say of $8\frac{1}{2}$ d. per hour for adult female workers is certain, other things being equal, to fix rates for female learners, etc., above the rates fixed by a Board which has started with a general minimum time rate, say, of $7\frac{1}{2}$ d. per hour for adult female workers.

A general minimum time rate may be fixed as so to apply universally to the trade, or so as to apply to any special process in the

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work of the trade, or to any special area, or to any class of workers in the trade, or to any class of workers in any special process, or in any special area.

This brings the reader into touch with some of the most difficult problems of Trade Board legislation. For instance, should home workers have a higher or a lower rate than factory workers? Should workers in Leeds have the same minimum rate as those in a small town say in Norfolk or Cornwall? Should workers in the tailoring trade engaged on a process like pressing have the same minimum rate as machinists? How far should age or experience in the trade be a basis for a differentiation of minimum wage?

Every one of those questions had to be answered in the case of one of the four original Trade Boards—namely, the Tailoring Trade Board.

The tendency of the earliest Boards was to simplify their work as much as possible. The Tailoring Trade Board, for instance, reserved its right to legislate on different lines for home workers and factory workers by proposing (a) a rate for home workers and (b) a rate for workers other than home workers and then simplified the position by making the same rate for both classes. On the question of areas the same Board had a very strong feeling that differentiation by area was impossible. Two Tailoring Boards were in fact constituted—one for Great Britain and one for Ireland. The Board for Great Britain fixed a minimum rate for the whole of Great Britain and when the Irish Board fixed a lower rate for Ireland it began passing a series of unavailing resolutions of protest. Up to quite recently no Trade Board had differentiated its rates by area, but the position is changing. In some trades recently brought under Trade Boards separate Trade Boards have been set up for England and for Scotland, and in at least one instance the Scotch Board has fixed a lower rate than the English Board (see Appendix (B) under Aerated Waters Trade Board.) This will naturally strengthen the case of Scottish employers of a similar class of labour under a British Trade Board in their claim for a lower rate than the English employers. The question came up again in a direct form on the Laundry Board, which proposed at an early stage of its history a special rate for the area within a radius of thirty miles of Charing Cross; and more recently still in the case of the Trade Boards for the Distributive Trades. To take a local instance, at the time of writing the general Birmingham rate for unskilled labour is about 63s. a week for men and at Stratford-on-Avon it is roughly a

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pound a week less. In the case of ready-made clothes this is an immaterial factor, as though no ready-made clothes are likely to be made at Stratford-on-Avon the transport of ready-made clothes from other centres is quite easy, and the concentration of the making of clothes in districts which have some special facilities for it and in which the payment of a universally applicable minimum rate is feasible may be to the best advantage even of Stratford-on-Avon. But in the case of milkmen who now have a Trade Board the position is very different. Both Stratford-on-Avon and Birmingham are bound to have its milkmen. If the standard of good employers at Stratford is made the basis of Trade Board legislation and universally applied, then only a few little country towns will get the benefit. On the other hand if the standard of good employers at Birmingham is taken as the basis, wages at Stratford will be suddenly raised about 50 per cent. and milkmen will be getting higher wages than some highly skilled workers. It looks very much as if differentiation by area with a close connection between population and minimum rate would shortly become the normal practice of certain Trade Boards. That is to say, large towns and possibly a fixed area round them will be treated as being one type of area, smaller towns will be treated as another type of area, and the rest of the country as a third type of area, and differential rates will be fixed for these three types of areas.

As regards differentiation by process, the position was simplified by the refusal of the first Trade Boards to legislate for any other class of work than the lowest, and under the Act of 1909 a good deal could be said for this policy. Now that a wider scope has been given under the Act of 1918 some Trade Boards are producing most complicated gradations of rate.¹ For instance, the Coffin Furniture Trade Board, which on the men's side deals with a section of the brass trade, has adopted the system of grading male workers in three classes which the Brassworkers Society adopted for its members a few years ago. On the other hand, the Hollowware Trade Board is at present content with a minimum rate for unskilled male labour and the workers side relies on Trade Union effort to secure higher rates for different classes of skilled labour, though recently the Trade Board has been preparing a scheme for an elaborate grading of the various processes of the Trade.

Differences in age and experience are dealt with by Trade Boards under the general heading of learnership, and lower rates are universally fixed for different classes of learners. The

¹ See however Recommendations (3) to (7) of the Cave Committee set out in the Appendix.

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problem of differentiation has been attacked from two points of view. If the trade demands a long experience before full qualification is reached then a sum which is reasonable for an absolute novice is fixed and the sum payable to the fully qualified worker being already fixed, the scale for the years of learnership ascends by more or less regular increments from one limit to the other. If, on the other hand, age is of more importance than experience and a boy of nineteen with no experience is practically as good as a boy of nineteen with five years' experience, then a scale of payments is fixed according to age, and the ordinary minimum rate is reached at some fixed age, say, eighteen in the case of women and twenty-one in the case of men, irrespective of actual experience. In practical life the two points of view cannot be entirely separated and nearly all learnership schemes are a blend of two systems. It is quite possible, for instance, for girls of sixteen to learn a skilled trade in a smaller number of years than girls of fourteen. Even in unskilled occupations experience counts for a good deal, and a youth of nineteen without experience cannot compete against another of the same age with considerable experience. Learnership schemes in practice are of two types. In the first type the grading is mainly according to experience with certain allowances for age, and in the second type the grading is mainly by age with certain allowances for experience. The question may be asked whether Trade Boards have fixed normal ages for men and women at which the full minimum rate should be paid. In the early days of Trade Boards the age of eighteen was selected as the age at which a woman became normally entitled to the full rate. Now it is getting quite usual to give further advances up to the age of twenty-one or even higher. The writer's own view is that it is to the advantage of the female workers to attain what is practically a full rate as early as eighteen and to continue at that rate for some years, say, till twenty-one. Most working class girls marry before twenty-one, so that workers over twenty-one form a class who in general are facing a life of work and self dependence, and there seems no objection to a higher rate for this class. But a gradation of the rate say from fourteen years of age to twenty-one generally means that the employers have succeeded in keeping the bulk of the female labour employed by them on what are substantially learners' rates. In the case of men, Trade Boards have never given the full rate to those under twenty-one, and it is not unusual to defer the full rate till twenty-two or twenty-three and so treating the years after twenty-one as years of improvership.

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Improvership, however, is a conception suitable to a highly skilled trade, and unless there are some special reasons it seems to the writer to be best to give the man of twenty-one who has had the normal experience of that age, the full rate.

We may now turn to the other rates which a Trade Board may fix if the circumstances of the industry make it possible and advisable to do so. The first of these optional rates is a general minimum rate of wages for piece work. In some industries a Trade Board rate for piece work is practically impossible, while in other industries, though the fixing of such a rate may offer no serious practical difficulties, yet for certain reasons it is inadvisable. A Trade Board piece rate cannot be fixed where the operation to be performed by the worker is not capable of being clearly and adequately defined in writing. The Tailoring Trade Board furnished several examples of this. One of the most important operations on a garment is 'pressing,' but the pressing of an expensive coat is one thing and the pressing of a cheaper coat is another. The rate paid for pressing a cheap coat may be much less than the rate paid for pressing the expensive coat, and yet the lower rate in the former process may yield the worker a higher rate of remuneration, because the work involved is so much less. *Now, the employer can fix a piece rate because he has a standard of pressing in his own mind and he can see that the worker works to that standard, but it is practically impossible to express that standard in a written definition as a basis for a Trade Board rate.* Button sewing is an operation of a similar character. The buttons on a 'Kaffir suit' made for the South African market are but lightly attached to the garment, while those on an expensive ready-made overcoat for the New York market must be capable of standing a sustained strain and be well finished off. The amount of sewing required in these cases cannot be adequately expressed in writing. If standard samples could be deposited at the Trade Board Offices the difficulty might be got over, but the trade does not possess standard samples and each manufacturer has his own standard. In other industries operations are standardised, as for instance in chain making, where the size of the iron used and the process employed are the only two determining factors. In the lace finishing industry the operations of thread drawing, clipping, scolloping, carding, etc., require no complicated definition and though there may be great variations in the number of threads, the pattern of the lace, and the process of making, yet by grouping together operations involving practically an equal amount of work, it has been found possible to cover all operations by some twenty or

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thirty piece rates. When a Trade Board has settled the question of the practicability of Trade Board piece rates it must then consider the advisability of fixing such rates. The question may be summed up in two sentences. First, if any particular operation is almost wholly done by home workers, or is done by home workers under conditions which are not comparable with those of factory workers, then the only satisfactory protection for the home workers is a Trade Board piece rate. It is impossible to pay home workers at an hourly rate, and it is very difficult for them to keep such a record of time spent over work as will constitute a fair criterion of the hourly return of the employers' piece rate. If, however, home workers are paid the same piece rates as factory workers, and the conditions of work at home and in the factory are fairly comparable, then, as there is no serious difficulty in computing the hourly earnings of the factory workers, an employers' piece rate which is proved to be satisfactory for the factory workers will also be a satisfactory rate for the home workers. Secondly, where a particular operation is mainly a factory operation, then a Trade Board piece rate either tends to stereotype operations or soon becomes obsolete. A resourceful employer is always trying experiments in fresh methods of production. Suppose, for instance, that ten operations, each with a separate piece rate, are customary in the making of a particular article. The employer sees that by amalgamating operations 2 and 3, and by splitting up operation 7 into two distinct operations he can make a saving in production and he proceeds to do so. If the ten operations are being done under Trade Board piece rates, he is no longer bound by rates 2 and 3, for he has introduced a new combined operation, nor is he bound by rate 7, because part of the operation is done by one worker and part by another. If another employer begins altering operations on his own account on different lines, still further complications ensue, and the Trade Board will find it practically impossible to fix piece rates for all employers or for any length of time. It may be taken for granted that, in general, factory work which lends itself to the piece work system will be done under employers' piece rates and not under Trade Board piece rates, the exceptional cases being such operations as the making of chains by hand and other possible cases of standardised methods of production. This at once raises the question of the position of a worker who is actually working on piece work terms on work for which the Trade Board has fixed a minimum time rate but no minimum piece rate. The combined effect of the Trade Boards Act, 1909 and 1918, is to introduce

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'a basis rate' for such piece workers. An employer will be deemed to be paying wages at less than the minimum rate unless he can show that his piece rate of wages would yield in the circumstances of the case to an ordinary worker at least the same amount of money as the basis rate. The term ordinary worker can wait for a moment until the nature of the basis rate has been explained. There is always a basis rate, because if the Trade Board is ignorant of the existence of piece workers, or has not had time to consider their special claims, or refuses to recognise any special claim, then the basis rate is the general minimum time rate already fixed. In general the minimum time rate is an inadequate protection for piece workers as the whole object of piece work is to stimulate production, and experience shows that a piece worker on the average produces from 25 per cent. to 33 per cent. more than a time worker in the same time. If, for instance, 8d. an hour is a reasonable rate for a female time worker on a particular job, we may presume that the employer will see that an ordinary worker produces eight pennyworth of work in an hour; the same worker put on to piece work with the added stimulus of that system will probably produce ten pennyworth of work in an hour, and if the Trade Board time rate is left as the basis rate, the employer can fix his piece rate so that he is satisfying the law by paying 8d. for this ten pennyworth of work. For by so doing his piece rate is yielding the ordinary worker the same amount of money as the basis rate and that is his only obligation. For this reason the Act of 1918 gives a Trade Board power to fix a piece work basis time rate for the purpose of being substituted for the general minimum time rate as the basis rate. It may do this in any case in which, having regard to all the circumstances of the case, it is of opinion that the general minimum time rate does not form a proper basis. The piece work basis time rate may be higher or lower than the general minimum time rate, and like it may be made applicable to special classes, special areas, etc. Since the Act of 1918 was passed practically all the Trade Boards for industries in which factory work is done on the piece work system have fixed piece work basis time rates substantially in advance of the general minimum time rates. In at least one case the basis rate is higher by the customary 25 per cent. In the large group of Trade Boards which act for the sewing trades the real nature of the basis rate is somewhat disguised. At the time of the Armistice a large proportion of the workers in the tailoring trade and possibly also in the shirt trade were working on awards of the Committee of Production, under which

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female time workers were getting $4\frac{1}{2}$ d. per hour plus war advances of 16s. a week. Piece workers were supposed to earn a percentage in excess of this, but calculated only on the $4\frac{1}{2}$ d. and amounting roughly to another penny an hour. The recent determinations of these Boards were an attempt to stabilise these figures and resulted in a general minimum time rate of $8\frac{1}{2}$ d. per hour, and a piece work basis time rate of $9\frac{1}{2}$ d. per hour.

The term 'ordinary worker' must now be discussed. The definition of this term is statutory and therefore no authoritative interpretation of it is possible until a decision on it has been given by a Court of Law. It is, however, almost certain that ordinary worker does not mean average worker; first, because that term could have been used and was not used and, secondly, because the process of calculating averages is really not relevant to the fixation of a minimum wage. It is no satisfaction to a worker who earns 20s. a week on piece work to be told that another worker is earning 50s. a week on the same work, and that this average rate of 35s. is satisfactory. Further, if the average worker or piece worker is to have the basis rate, the presumption is that a large proportion—possibly one-half—of the workers will have less than the average rate, and therefore less than the basis rate. The true interpretation is most probably arrived at by considering the practical difference to an employer who puts his workers on a piece rate instead of a time rate. An employer who is bound to pay his time workers say not less than 8d. per hour, will take care not to engage or retain as time workers those who are not worth 8d. an hour, and if the Trade Board rate is a reasonable rate a supply of labour of ordinary capacity will be available at that figure. The lazy and unskilful who are inadvertently engaged will be weeded out. Suppose, however, the employer engages a group of workers to undertake piece work. Under the stimulus of piece work the bulk of them will earn more than 8d. per hour, and if the Trade Board has fixed 9d. or 10d. as the basis rate we may expect the greater number to attain those hourly amounts, while some may earn very much more. There are sure to be some slow and some indifferent workers in the group of the type which under a time rate would be dismissed. As, however, the employer is paying by results the presence of a few of these workers does no great harm. The actual work done by these workers is paid for by the employer at the same rate as he pays for the product of the fast and the ordinary workers. If his overhead charges are very heavy then a slow worker may mean a loss to him in other ways, but if there is plenty of room in

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the factory and the slow workers are not using very expensive machines, the use of which can only be justified by rapid production, and if they do not tend to lower the whole efficiency of the shop, then there is no particular reason why a slow piece worker should be dismissed. Experience shows that piece workers are not weeded out with the same rigour as time workers are. Hence a group of piece workers will generally consist of a few really fast workers, a considerably larger proportion of workers of ordinary capacity, between whose rate of working there is some difference but not a great deal of difference, and then a few definitely slow workers. These last may be called sub-ordinary workers. Every worker is to be deemed an ordinary worker who is of ordinary capacity and has a reasonable prospect of engagement either as a time worker or a piece worker. Workers who only owe their retention in the trade to the fact that they are paid by results may be deemed to be sub-ordinary. The question may be asked whether any rule can be laid down as to the usual proportion of sub-ordinary workers in piece work groups. Mr. Edward Cadbury is of opinion from his own experience that 90 per cent. of workers are ordinary workers and only 5 per cent. are exceptionally fast and only 5 per cent. exceptionally slow. But at Messrs. Cadbury's works a fairly stringent sorting out process is in operation, and various tests of intelligence have to be satisfied before engagement. Two of the early Trade Boards—namely, the Paper Box Board and the Tailoring Board—adopted rule of thumb tests for administrative purposes and the Paper Box Board decided that any piece rate which failed to yield the basis rate to at least 85 per cent. of the workers should be deemed not to be yielding the basis rate to the ordinary worker, while the Tailoring Board fixed its figure at 80 per cent. To sum up, the Trade Boards Acts secure the basis rate for all ordinary workers on piece work, but in the term 'ordinary worker' there is almost certainly a recognition of the fact of the existence of a small but undefined proportion of slow or sub-ordinary workers. The Act of 1918 implicitly recognises the correctness of this interpretation of 'ordinary worker' by introducing a special but optional protection for the sub-ordinary class in the shape of 'a guaranteed time rate.' This is defined by the Act as a minimum time rate (which shall not be higher than the general minimum time rate) to apply in the case of workers employed on piece work for the purpose of securing to such workers a minimum rate of remuneration on a time work basis. Thus it would be possible for a Trade Board to begin by fixing a general minimum time rate

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of 8d. an hour for time workers, and then to proceed to fix a piece work basis rate securing to the ordinary piece worker 10d. an hour, and then finally to secure theoretically for all piece workers, but practically for sub-ordinary piece workers, a guaranteed time rate of 7d. an hour, to which their actual piece work earnings must be raised. So far Trade Boards are fighting shy of fixing guaranteed time rates for piece workers; apparently because they feel that in the existing state of the labour market the result would be that an employer would dismiss any worker whose piece work earnings had systematically to be raised to the guaranteed time rate. During the war it was very usual to insert in the various awards of wages for munition workers a provision for a guaranteed time rate for piece workers, but then labour was so much in demand there was very little risk of the dismissal of slow piece workers. Under war conditions half a producer was better than no producer at all.

In the course of this discussion of the piece worker's position we have incidentally disposed of all the rates possible under the Acts except a special minimum piece rate and an overtime rate. The former is a piece rate, or a series of piece rates, fixed for an individual employer who applies to the Trade Board to fix piece rates for his class of work on the ground that there is only a general minimum time rate or a piece work basis time rate applicable. He can insist on the Trade Board shouldering the responsibility of fixing proper rates for his particular classes of piece work. At the first blush it might be thought that having regard to the uncertainty of the term 'ordinary worker,' employers would frequently resort to the Trade Board for the determination of these special minimum piece rates, but as a matter of fact these applications are very rare. The reason for this seems to be that the applicant has to disclose to a local committee of the Trade Board in detail the working of his factory, and that he does not like other employers in his own trade and locality to have the opportunity of acquiring this knowledge.

The overtime rate is an interesting feature of the Act of 1918 and the possibility of its general application is another of the permanent results of the experiments made during the war in the regulation of wages for munition workers. The Act of 1918 defines the overtime rate as a minimum rate to apply, in substitution for the minimum rate which would otherwise be applicable, in respect of hours worked by a worker in any week, or on any day in excess of the number of hours declared by the Trade Board to be the normal number of hours of work per week or for that

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day in the trade. Nearly all Boards are using their powers, which are optional, in regard to these overtime rates. As a Government Bill for a universal forty-eight hours week has been promised for a long time, no Board has so far fixed a normal week in excess of forty-eight hours, while the Boards dealing with metal trades are generally fixing a forty-seven hour week in recognition of the existing practice of those trades. The Trade Boards are following trade customs fairly closely and giving time and a quarter for ordinary evening overtime and double time for Sundays and holidays. There are naturally certain variations on minor details, and particularly as to the length of the working day as distinct from the working week. In form an overtime rate is a special wage rate, but in substance it is a means of checking long hours of work, and in that aspect comes under the second part of this section.

In the discussion of the practical application of time rate and piece rate payments in the case of a slow worker it has been assumed that a slow worker on a time rate who is below the ordinary capacity will be dismissed by the employer if he is compelled to pay such worker the full Trade Board minimum time rate. If the worker is young and able in body and mind this may be a disguised blessing and dismissal from work for which the worker is obviously unsuitable may result in the transference of the worker to an industry at which better work can be done. If the worker's slowness is due to age, or physical or mental infirmity, then no mere change of occupation can be a cure, and dismissal is a real hardship. The Act of 1909 provided for these cases by allowing the Trade Board to grant exceptions or permits to individual applicants. The applicant must be affected by some infirmity or physical injury which renders him or her incapable of earning the minimum time rate otherwise applicable and it must be shewn that the applicant's case cannot suitably be met by employing the worker on piece work. The Act of 1918 introduced some slight modifications. Thus, if the exemption required is from the operation of a guaranteed time rate for piece workers, then the hardship contemplated is that the applicant who is either on piece work or is to go on piece work is in fear of dismissal on account of inability to earn the guaranteed time rate. As has already been pointed out, guaranteed time rates for piece workers are not in favour, and at the present time permits are generally applied for on behalf of workers who cannot through infirmity or physical injury earn the general minimum time rate, and who are not suitable for piece work. The Trade Board may impose conditions

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when it grants a permit and the employer is then only relieved of liability for paying wages to the worker at a rate less than the minimum rate so long as the conditions presented by the Trade Board are complied with. These conditions generally take the form of a special wage payment for the worker, which is of course lower than the minimum time rate, but which is sometimes a weekly wage instead of an hourly wage, so that the wage, though comparatively small, is independent of casual illnesses. If the Trade Board is satisfied that the employment of a particular worker is not a business proposition, but really a piece of charity on the employer's part, it is usual to make the permit unconditional, but in all other cases a real effort is made to assess the value of the worker and to make the conditions just for both the employer and the worker. Trade Boards take a good deal of trouble over their permits and proceed only on medical evidence and the report of an investigating officer. It is usual also to grant permits for fixed periods, say six or twelve months, so that circumstances can be reviewed from time to time.

The machinery for fixing or varying a Trade Board rate other than a special minimum piece rate is as follows. The Board meets for the purpose of considering a proposal or proposals. Discussion may reveal that the two sides are agreed, and then the proposal, which is probably more or less informal, is drafted in a form in which it can be circulated in the trade, and a formal resolution is carried approving the draft proposal, which is identified by the chairman writing his initials on it. If the draft is complicated, after all the essential terms are worked out, the actual wording may at this stage be left to the Secretary of the Board. If the two sides are at variance, then the appointed members take up their task as conciliators and try to bring the parties to agreement. If they succeed, then once more there is an agreed proposal. If they fail to get an agreed proposal, then the appointed members are driven, in substance if not in form, to make a proposal of their own. They cannot, however, carry any proposal without the support of one or other of the sides, but they can announce the kind of proposal for which they will vote. As the workers' side never have anything to gain from a deadlock, at any rate when a rate is being fixed and not merely varied, they can generally be induced as a last resort, and with any protestations they think advisable, to propose what they know can be carried by the vote of the appointed members. Sometimes the employers feel that a concession on their part will be prudent, and they accept the suggestions of the appointed

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members. But in every case the proposal must be carried by a majority, and it then becomes the proposal of the Trade Board as a whole. The next step is for the Board to give notice of the rate which they propose to fix, or of their proposal to cancel or vary an existing rate, and they must consider any objections to the proposal which may be lodged with them within two months from the date of the notice. As a certain amount of time must be allowed for printing and circulating the notices, the next meeting of the Board cannot be held until ten or twelve weeks have elapsed. If the Trade Board is proposing to vary a rate which has not been effective for a period of at least six months, the Board must apply to the Minister of Labour for his consent to give notice of their proposal to vary, and the Minister must not give his consent to the application unless he is satisfied that the special circumstances of the case render it desirable that such notice should be given immediately. If the Trade Board has established District Trade Committees these Committees must be convened and an opportunity given to them to report their views on the proposal to the Trade Board and the Trade Board must consider any report made by a District Committee. While the principle of a universal rate is in the ascendant the reports of District Committees are not likely to be of any particular value, but if a differential rate for districts ever becomes a practical issue their reports may be of considerable use in arriving at a fair basis of differentiation.

When the Trade Board meets again to fix or vary a rate according to its proposal it must take into consideration the objections which have been received, and where the Board has District Committees, the reports of those Committees. If the proposal was an agreed proposal, the probability is that there will be few or no objections, but such objections as come to hand will be spontaneous or unorganised, for the official organisations of the two sides of the Board will be precluded from going back on their bargain. If the proposal was carried by the vote of the appointed members, then the defeated side on the Board may, and very likely will, organise the lodging of objections, which will tend to be in a stereotyped form. The original proposal of the Tailoring Trade Board as to women's rates met with two or three hundred objections. The original proposal of the Laundry Board provoked about eight hundred objections. It is a matter of some importance that Trade Boards should feel themselves free to treat a proposal to fix as a proposal and nothing more, and should be willing, on a case for alteration being made out, to modify

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it. In Mr. Tawney's book on the Minimum wage in the Tailoring Industry a long account is given of the precedent in this respect created by the Tailoring Trade Board. The original proposal which has already been referred to was for $3\frac{1}{2}$ d. per hour. At the first stage the two sides could not be got nearer than an offer of $2\frac{3}{4}$ d. from the employers and an offer of 4d. from the workers. When the appointed members threw out the suggestion of $3\frac{1}{2}$ d. the employers moved up to 3d. and the workers came down to $3\frac{3}{4}$ d. As one of the appointed members concerned, the writer may perhaps be pardoned for expressing his personal view. In controversies of this kind there is not a dividing *line* between the parties but rather a dividing *space*. The appointed members did not commit themselves to $3\frac{1}{2}$ d. as the only reasonable rate. It was probably the highest rate that was reasonable, but as the employers were in a mood to obstruct any rate above 3d. a lower rate would have been met with just as much opposition from the employers and would have been less acceptable to the workers. At the proposal stage the appointed members could secure no compensating advantage to the workers by giving the preference to a $3\frac{1}{4}$ d. over a $3\frac{1}{2}$ d. rate. When the Trade Board met to consider the objections, it was evident that there was a very solid opposition amongst employers to the $3\frac{1}{2}$ d. rate, but, what was far more important, the employers were now prepared to accept $3\frac{1}{4}$ d. and to make smooth its path. In practice a $3\frac{1}{4}$ d. rate, coupled with the goodwill of the employers, might be as valuable to the workers as a $3\frac{1}{2}$ d. rate imposed on the employers against their will and evaded and obstructed by them at every turn. The appointed members, by accepting $3\frac{1}{4}$ d., were securing for the workers some very real advantages, and they therefore agreed to a new proposal at that figure and this went through without any serious difficulties. In most cases, however, the original proposal is confirmed by the Board with or without minor alterations not involving a new proposal. The next step is for the Trade Board to notify the Minister of Labour of the minimum rate of wages fixed by them, and to suggest a date from which it should become effective. As soon as the Minister receives this notification he must forthwith take the matter into his consideration and unless he thinks it necessary to refer the matter back to the Trade Board for reconsideration, he must as soon as may be make an order confirming the rate. Unless there are special circumstances, he is directed by the Act to make the order within one month from the date on which the notification from the Trade Board was received. The Minister of Labour then at once lets

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the Trade Board know that the rate has been confirmed and the Trade Board gives notice to all persons concerned in the manner prescribed by regulations. These regulations must include provisions for fixing notices of rates in factories, workshops and any place used for giving out work to outworkers.

The rate becomes effective as from the date specified in the Order by which it is confirmed, and the date must be one subsequent to the date of the confirming Order. From such date an employer must pay wages to a worker at not less than the minimum rate, clear of all deductions, and if he fails to do so he is liable on summary convictions in respect of each offence to a fine not exceeding £20 and to a fine not exceeding £5 for each day on which the offence is continued after conviction. On the conviction of the employer the Court may also order him to pay, in addition to the fine, such sum as appears to the Court to be due to the person employed on account of wages calculated on the basis of the minimum rate. The worker may also recover arrears of wages by ordinary civil proceedings. Agreements for the payment of wages in contravention of these provisions are void.

If a Trade Board is silent as to the duration of a rate fixed by it, then such rate, on becoming effective, remains effective until it is cancelled or varied. A Trade Board can, if it pleases, fix a series of minimum rates to come into operation successively on the expiration of specified periods, and when it is varying an existing rate it may vary the rate for a specified period. The actual rates in force are now very complicated and the reader who is interested in details is referred to the *Labour Gazette*, which publishes all Trade Board determinations, but as some guide to the general level of these rates a summary of rates which were in force simultaneously is given in the Appendix.

Two points of practical difficulty which arose in the process of administering the rates paid by Trade Boards under the Act of 1909 have been greatly diminished by new provisions of the Act of 1918.

The first difficulty was concerned with the identification of special classes of persons for whom special rates have been paid. In the case of learners the early Trade Boards took the risk and defined learners as persons who were of a certain age and experience and who held a certificate from the Trade Board that they were learners. On pp. 88-9 of the present writer's *Industrial Law* will be found a discussion as to the powers of a Trade Board to legislate for special classes and the opinion is there expressed that a Trade Board can recognise and legislate for existing special classes of workers,

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but cannot create them. Learners are undoubtedly an existing class of worker, but there was a danger that certificated learners might be held to be a created class. The Act of 1918 now enacts that where a Trade Board fixes a minimum rate for a special class of workers they may attach a condition that workers who are members of the class must be holders of certificates to that effect issued by the Trade Board. This is a perfectly general provision and could be applied to the grading scheme of the Coffin Furniture Board (to which reference has been made on p. 56) just as much as to their learnership scheme, but so far in actual practice certificates are only issued to learners. Certificates cannot be withheld arbitrarily and must be issued to applicants who produce evidence of membership of the class which is to the satisfaction of the Trade Board.

The second difficulty only concerned learners. Could the Trade Board impose conditions in granting certificates to learners to insure the reality of learnership? Evidence was put before certain Boards as to the exploitation of juvenile labour, and the erection of 'blind alley' occupations for many people. It was extremely doubtful what could be done under the Act of 1909, but now the position is made quite clear by the Act of 1918. Under that Act the Trade Board may, in the case of persons who are learning the trade, attach such conditions as it may think necessary for securing the effective instruction of these persons in the trade. Under the Act of 1909 the utmost employers were prepared to offer was that learners should have reasonable opportunities of learning, but they were not prepared to make themselves responsible for instruction. The matter was of considerable importance in the Tailoring Trade, on account of the extent to which the sub-divisional system has been carried in that trade. An employer, in his own interests, will give his own learners such instruction as will make them useful workers in his establishment, but what the learner needs is such instruction as shall make him useful in any establishment in the same trade. In some trades all factories are run on much the same lines, and experience in one factory furnishes a general qualification. In trades where the sub-divisional system is adopted it is quite possible that each employer will have a separate system of sub-division, and that a worker going from one factory to another has to make almost a fresh start. The Trade Board have now power to insist on effective instruction. It must not be assumed that sub-divisional labour is only practised in the sewing trades. The present writer had a glaring instance brought to his notice quite recently of the

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want of effective instruction due to sub-divisional labour in the metal trades. A young man attending before a Court of Referees claimed that he was a polisher of the seat pillars of bicycles, that he had never done any other kind of polishing, and that polishing of cranks, or handle bars or other parts of the bicycle was not suitable work for him! In this instance the Court of Referees did not share his view, but the dangers of learning only of many sub-divided processes is obvious.

One or two Trade Boards have been considering the important practical question of the revival or the encouragement of apprenticeship as distinguished from mere learnership. Under apprenticeship the master undertakes the obligation of teaching, which means a good deal more than merely giving opportunities of learning, and under modern conditions there has been considerable reluctance on the part of employers to assume this obligation. Pioneer work in this direction has been done by the Brush and Broom Trade Board. Their last award for male workers begins by adopting the usual graded scale for male workers under the age of twenty-one years, the scale being based entirely on age. It then provides that these rates shall not apply (1) to male indentured *apprentices who are employed under Indentures in a form prescribed by the Trade Board* and are working under Conditions laid down by the Trade Board, (2) to male indentured apprentices or unbound learners employed under an indenture or written agreement entered into prior to 1st January, 1920, and providing for the proper instruction of the apprentice or learner in certain defined operations. In order to encourage employers in taking indentured apprentices, the rates fixed for apprentices are less than the rates which would be payable to them as learners. The scheme is a very elaborate one and may be found in full in the *Labour Gazette* for June, 1920. It includes a provision for placing the apprentices under journeymen instructors, who get as remuneration the difference between the amount paid to the apprentices and what they would have earned on ordinary piece rate terms. The Trade Board also lays down the proportion of apprentices to journeymen that may be employed on these terms.

To complete the statement of the position of Trade Boards in regard to the fixing of wages it is necessary to gather together certain miscellaneous provisions of the Acts of 1909 and 1918 which have been inserted to prevent evasions of the Act.

In some trades workers have to use material, such as sewing cotton, etc., which they either supply themselves or which they obtain from their employers at a reasonable price, which is

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deducted from their wages. Section 5 of the Act of 1918 contains a stringent definition of the term 'deduction,' so as to make the payment of the minimum wage clear of all deductions a reality. The only deductions allowed are those payable under the National Insurance Act, 1911, and subsequent amending legislation, or deductions authorised by any Act to be made from wages in respect of contributions to any superannuation or other provident fund. Deductions of the character indicated above, which are lawful under the Truck Acts, 1831 to 1896, must not reduce the wage paid below the minimum, and payments receivable by the employer from the worker under the first three sections of the Truck Act, 1896, if actually made by the worker, are to count as deductions. A further account of these deductions will be found on pp. 94-101.

Another very practical point which concerns piece workers is that of time spent at the factory in waiting for jobs. Section 8 of the Act of 1918 provides that for the purpose of calculating the amount of wages payable under the Acts the worker shall be deemed to have been employed during all the time during which he was present on the premises of the employer, unless the employer proves that he was so present without the employer's consent, express or implied, or that he was so present for some purpose unconnected with his work and other than that of waiting for work to be given to him to perform. Exceptions are inserted in regard to workers who reside on the premises and the taking of meals in a room or place in which no work is being done.

The Act of 1918 also tightens up the obligation of an employer as to keeping records of wages, and the combined effect of the two Acts is to place on the employer (a) the duty of keeping such records of wages as are necessary to show that the provisions of the Acts are being complied with as respects persons in his employment, and (b) the onus in case of a prosecution of proving that he has not paid wages at less than the minimum rate.

Lastly, an employer is prevented from disguising employment and substituting some relationship which at common law may not be employment, but which in substance comes to the same thing and expose the worker to the same evils. Section 9 of the Act of 1909 enacts that any shopkeeper, dealer, or trader, who by way of trade makes any arrangement, express or implied, with any worker in pursuance of which the worker performs any work for which a minimum rate of wages has been fixed under the Act, shall be deemed to be the employer of the worker, and the net remuneration obtainable by the worker in respect of the

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work after allowing for his necessary expenditure in connection with the work shall be deemed to be wages. The stock instance of this kind of thing is for a shopkeeper to sell the raw material to the worker and to buy back the finished article.

We now pass to a consideration of the operation of the Coal Mines (Minimum Wage) Act, 1912, which will not need lengthy notice. The first point of difference to be noted is that no penalties are imposed for a breach of the Act, and that the only remedy of an aggrieved worker is to take proceedings in the Civil Courts for recovery of the minimum wage. The Act enacts that it is to be an implied term in every contract for the employment of a workman underground in a coal mine that the employer shall pay to the workman wages at not less than the minimum rate to be settled under the Act, and applicable to that workman, unless excluded from its scope by (a) old age or infirmity or (b) non-compliance with the conditions regarding regularity and efficiency of work.

The exclusions constitute the second important point of difference. The exclusions for old age and infirmity are, of course, on the lines of the permits given under the Trade Boards Acts, but apparently individual cases were not dealt with in the detailed and painstaking way which the Trade Boards have adopted. The exclusion for non-compliance with conditions binding on the worker was entirely new in principle. It is not easy to get information as to the practical utility of the Act under present conditions in the coal mining industry, but the following extract from an account of the original working of the Act which appeared in the *Economic Journal* for September, 1912, pp. 385-6, is still of considerable value and interest:—
'The work of the Boards has varied greatly in complexity; thus in Northumberland the only divisions are into men and boys, piece workers and day workers, while in Cumberland twenty-four, and in South Wales thirty-six classes of workers are separately provided for. The district rules are in many cases very stringent; thus in Northumberland piece workers over fifty-seven years of age are excluded from the Act and one day's absence without excuse forfeits the right to the minimum for a whole fortnight. In Durham, Cumberland, Leicester and elsewhere the minimum is not paid if not earned at the current piece rates, unless the workman can prove that the cause was one over which he had no control. In Lancashire a workman presenting himself at the pit bottom and finding his services not required is not entitled to the minimum, and in most districts, if he is prevented from

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working more than part of a shift, only a corresponding proportion of the minimum is payable. Other provisions prescribe forfeiture in case of breach of colliery rules, disobedience to officials, delay in starting work, etc. In most cases provisions are made for the settlement of disputes by joint committees, generally with an outside chairman with final powers.'

Rates under the Act can be varied from time to time, and provision is inserted for the stability of a rate for a fixed period unless all parties consent to an earlier variation. The minimum period for which a rate stands, unless altered by consent, is one year and there must also be a notice or proposal period of three months. Either the masters' side or the men's side can raise the question of variation, and the whole side need not act together, but the demand must come from a group representing a considerable body of opinion.

Finally, we have to consider the operation of Part II. of the Corn Production Act, 1917.¹ This Act was passed when certain changes as to Trade Boards were already under discussion, and it is to some extent a forerunner of the Trade Boards Act, 1918. Naturally it has certain features which apply merely to an Agricultural Board. The points to note are as follows :—

The Act was to be an effective Act as from the date of its passing, and it was therefore necessary to fix a minimum rate by the Act itself, which was to be in operation till the Board could get to work. Certain provisions were to operate as respects able-bodied men as from the commencement of the Act, although a minimum rate of wages may not have been paid, but no sum was to be recoverable except to the extent to which the wages paid had not, in the opinion of the Court, been equivalent to wages for an ordinary day's work at the rate of 25s. a week. Besides the usual power to fix minimum rates for time work and piece work, and to discriminate by area and class, a further power was given, so that the rate might vary according as the employment was for a day, week, month, or other period, or according to the working hours or the conditions of employment, or so as to provide for a differential rate in the case of overtime. As a matter of fact, the rates fixed were weekly rates, uniform throughout the year, but with a longer working week in the summer than in the winter. Overtime rates were payable when the ordinary working hours for the week were exceeded. The proposal period is only one month, as compared with two months under the

¹ This Act has now been repealed.

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Trade Boards Acts. The Truck Acts have always allowed certain exceptions in favour of the 'servant in husbandry,' and unless this privilege was done away with, it was necessary to insert some means of valuing the cottage supplied by the employer or the food or other allowances he received in addition to his money wages. The system adopted was to make the Agricultural Wages Board responsible for assessing the value of these benefits in each individual case. The system of permits for old and infirm workers was also made part of the Act, so that a great deal of consideration was given to individual cases, and as the Board operated through thirty-nine district committees, these individual cases could all be dealt with locally.

We have now considered all the different Acts under which there is a statutory determination of wages, and strictly speaking this division of the subject should be closed. Trade Boards, unlike the Wages Boards for Mining and Agriculture, have been given certain powers which go beyond the mere fixing of wages, and which more nearly resemble the powers possessed by Industrial Councils set up on the lines recommended in the Report of the Whitley Commission, and it may be a convenience to say something about these powers. The germ of this policy is to be found in section 3 of the Trade Boards Act, 1909, which placed on a Trade Board the duty of considering, as occasion required, any matter referred to them by a Secretary of State, the Board of Trade, or any other Government department, with reference to the industrial conditions of the trade, and of making a report on the matter to the department by whom the question had been referred. It will be noticed that under this section the initiative is with the Government departments and that it was possible for them to ignore the existence of a Trade Board in any particular trade. Under section 10 of the Trade Boards Act, 1918, the initiative is given to the Trade Boards, and now a Trade Board for any trade may, if it thinks it expedient so to do, make a recommendation to any Government department with reference to the industrial conditions of the Trade, and the department to whom the recommendation is made shall forthwith take it into consideration. The result of raising the status of the Trade Boards is that section 3 of the Act of 1909 is being more utilised. For instance, the Home Office now consults the appropriate Trade Boards before making Welfare Orders for any industry. A rather interesting example of Trade Board initiative came under the writer's notice. In the chain trade work is done under conditions which tend to facilitate bad timekeeping, and it was found

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that the restrictions on the hours for the opening of licensed premises which were adopted during the war very much improved the hours worked in this trade. The Chain Trade Board, on a motion proposed from the workers' side, passed a resolution in favour of the continuance of restricted hours and forwarded it to the appropriate Government department for consideration.

Addendum. Since this Chapter was set up in type the Cave Committee which was appointed by the Minister of Labour to report to him on the working and effects of the Trade Boards Acts has issued its Report (Cmd. 1645 of 1922). The Summary of Recommendations contained in that Report will be found in the Appendix.

CHAPTER II

STATUTORY ENACTMENTS AS TO THE ASCERTAINMENT OF WAGES

THE problem to which the present section is addressed concerns piece workers only. There are two points as to which controversy can arise to the detriment of the worker. The first is as to the rate of wages to be paid for the work. Let us take an imaginary example. A woman outworker goes up to a factory to ask for work which she intends to do at home, and she asks verbally what the price is. She is told that it is 9d. per gross, to which she replies that Mr. Jones is paying 11d. per gross and why can't she have the latter figure. The employer's order is urgent so he says 'I'll give you tenpence,' and the woman assents. When she brings the finished work back it is taken in by some one else who is used to paying 9d. and only offers that. If the woman insists on 10d. and gets it she may never get any more work. If she insists on 10d. and doesn't get it, and takes the matter into Court, the employer, if unscrupulous, can deny that he ever promised 10d. and then there is her word against his word and against the practice of the firm to pay 9d., and the woman in all probability will lose her case. Again, the dispute may not be over the rate to be paid, but over the work to be done in return for the promised wage. A woman, for instance, takes out coats to be machined at home, and the work involved may include, besides the actual machining necessary to make a complete garment, some extra machining to give it style. A price is fixed, and the employer does not dispute it, but he claims that the worker has not done all she promised to do, and he therefore offers less than the agreed price. Here again the uncertainty of a verbal arrangement is all in the master's favour. Then there are questions of counting and weighing. A woman in course of making some small metal goods is given a box full of work to do. When she has finished she thinks she has done $4\frac{1}{2}$ gross, but the employer on pay night asserts that there were only 4 gross in the box. By the time the controversy arises the work has got

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mixed with other work and the employer's version is sure to be insisted on.

This kind of grievance is not confined to women; as regards measuring and weighing controversies generally arise from men's work. In coal mining and quarrying and in foundries it is quite usual for work to be paid for by weight. In some cases it is possible for a man to see his work weighed, but not in others. For instance, the coal getter loses sight of his work when the tubs which he fills are sent away a considerable distance to be weighed. It is a matter of considerable importance to eliminate, not merely the chance of actual dishonesty on the part either of the employer or the workman, but also the disputes which arise from carelessness, incorrect memory, and ambiguous or inconclusive bargaining. A document in writing, seen and agreed to by both parties, is the outstanding precaution against these difficulties. An individual document (commonly called a ticket) for each worker for each transaction is the surest safeguard, but may be laborious and costly as a system. A placard is a great saving of trouble, but is inapplicable to varying circumstances. A placard may be admirable for notifying what the rate of payment is, but entirely useless for settling the question whether Mrs. Jones was given 4 gross or $4\frac{1}{2}$ gross of work. When it is a question of weighing work, if the work cannot be weighed in the presence of the worker, the best device is to allow someone to act on the worker's behalf, to check the accuracy of the weighing.

These difficulties have been known and discussed for about one hundred years, but the interference of the State on any large scale is comparatively recent. The power of the Home Office to enforce the giving of particulars in an industry by making a special order applicable to that industry only dates from 1895, and the similar power to set up a system of 'check weighing' in an industry only dates from 1919 and at present is hardly known.

The details of legislation on these points are as follows. As early as the Arbitration Act of 1824 it was enacted that a ticket of particulars might be used in giving out work and, *if both parties agreed* to this being done and to the form of the ticket, then in the event of dispute between the manufacturer and workman, the ticket was to be 'evidence of all matters and things mentioned therein or respecting the same.' In the year 1845 compulsory 'tickets' were introduced in the hosiery trade and the silk weaving trade, and the Acts of that year are still in force. The Hosiery Act, 1845, enacted that when a manufacturer of hosiery gave out to a workman materials to be wrought he was at the same time

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to deliver a printed or written ticket, signed by himself, containing the particulars of the agreement in a form contained in a schedule to the Act. This schedule contained separate provisions with regard to stockings, socks, gloves, shirts and caps, and a general form for other descriptions of hosiery. The particulars as to socks, which form almost the simplest class, will give a good idea of the variety of points on which disputes could arise if no exact record were kept. The ticket must state the gauge, whether ribbed or plain, what kind of material, the size, the jack in width, the mark, the length of leg with top, the length of foot, the narrowings in heel, gusset and toe, whether cut or wrought heels and feet, the price per dozen pair, the name of the party putting out the work, and the name of the artificer. The manufacturer had to keep a duplicate of the ticket until the work contracted to be done was completed or paid for. In the event of any dispute between the manufacturer and the workman, the ticket and the duplicate were to be produced, and were evidence of all things mentioned in them, but if the subject of dispute related to an alleged improper or imperfect execution of any work, such piece of work was to be produced, and in default of production was to be deemed to have been sufficiently and properly executed. The Silk Weavers Act, 1845, was on similar lines, but the giving of a ticket could be dispensed with if both parties agreed in writing to that course. Besides the names of the parties, particulars had to be given of the details of the weaving and the price in sterling money agreed on for executing each yard imperial standard measure of thirty-six inches of such work in a workmanlike manner. The reference to the imperial yard suggests that disputes used to arise as to what a yard was.

The next statute to notice is an Act for the Regulation and Inspection of Mines, passed in 1860. This Act sanctioned the employment of an official, from 1872 onwards, known as a 'checkweigher,' paid by the piece workers, who might be stationed at the place appointed for the weighing, measuring, or gauging of the coal, ironstone, or other material gotten, in order to take an account thereof, and also of the weight, measure, or gauge used therein on behalf of such persons as employed him. From 1872 onwards mines have been classified into 'coal mines' and 'metaliferous mines' and so far Checkweighing is confined to 'coal mines,' but the reader must note that the term 'coal mines' applies to mines of coal, mines of stratified ironstone, mines of shale, and mines of fire-clay. By the Coal Mines Regulation Act, 1872, the duties of checkweighers were simplified by relieving

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them of part of the duty of testing the weights and measures used. A current Weights and Measures Act was applied to coal mines so that the testing of the weights and measures used became part of the work of official inspectors of weights and measures. The existing legislation as to Checkweighing in mines is contained in sections 12 to 14 of the Coal Mines Regulation Act, 1887, section 1 of the Coal Mines (Checkweigher) Act, 1894, and the Coal Mines (Weighing of Minerals) Act, 1905, all of which will be found verbatim in Appendix XI. of *Industrial Law*. The following is a summary of the more important of those provisions. Where the amount of wages paid to any of the persons employed in a mine depends on the amount of coal gotten by them, those persons shall be paid according to the actual weight gotten by them, and the mineral gotten by them shall be truly weighed at a place as near to the pit mouth as is reasonably practicable. Deductions for stones, etc., and for the improper filling of tubs may be made either in some manner specially agreed or by agreement between some person appointed by the mine owner on the one hand and the checkweigher on the other hand, and in the latter case in default of agreement, by an arbitrator. If the mine does not employ more than thirty persons underground the Home Secretary may devise an alternative scheme.

An interesting case has quite recently been decided by the House of Lords as to what the rights of the parties are when no agreement as to deductions has been arrived at. In this case no special agreement had been arrived at, and the owner's weigher and the miner's checkweigher could not agree. The checkweigher refused to consent to any mode except the actual picking over and weighing in the case of each and every hutch, a mode which admittedly meant the stoppage of the mine owing to the time which this process would take and the consequent accumulation of trucks. The owners proposed to determine the deductions by a system of averages. The miners apparently thought that if they refused to agree to any practicable method of arriving at the deductions no deductions from the weights as ascertained by weighing the gross amount of mineral sent up could be made, and they would be entitled to be paid for the gross weight, and they brought a test action in which they claimed to be paid on such gross weight. The company proved that a substantial part of that gross weight was not coal. On that finding the House of Lords held that the miners could not succeed in their claim.¹

¹ *Coltess Iron Co., Ltd., v. Dobbie, Labour Gazette, June, 1920.*

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The persons who are employed in a mine and are paid according to the weight of the mineral gotten by them may at their own cost station a checkweigher at each place appointed for the weighing of the mineral and at each place appointed for determining the deductions in order that he may, on behalf of the persons by whom he is so stationed, take a correct account of the weight of the mineral or determine correctly the deductions as the case may be.

The persons appointing a checkweigher may also appoint a deputy to act in the absence of the checkweigher for reasonable cause, and the deputy has the same rights and duties as the checkweigher himself.

A checkweigher is to have 'every facility afforded to him for enabling him to fulfil the duties for which he is stationed, including facilities for examining and testing the weighing machine, and checking the taring of tubs and trams where necessary, and including provision for him of a shelter from the weather, containing the number of cubic feet requisite for two persons, a desk or table at which the checkweigher may write, and a sufficient number of weights to test the weighing machine.'

On the other hand, a checkweigher is not in any way to impede or interrupt the working of the mine, or to interfere with the weighing, or with any of the workmen, or with the management of the mine, but to confine himself to taking such account or determining such deductions as have been mentioned. If he is absent, the weighing, etc., may proceed in his absence, unless he had reasonable ground to suppose that the weighing, etc., would not be proceeded with. He is free to give relevant information about the weighing, or the deductions to any of the workmen for whom he is acting, but he must not do so in any way which interrupts or impedes the working of the mines.

A checkweigher may be removed for impeding or interrupting the working of the mine, or interfering with the weighing or with any of the workmen, or with the management of the mine, or for exceeding his duties to the detriment of the mine owner, but only by a Court of Summary Jurisdiction. The mine owner makes the complaint, and the Court hears the parties and then if the Court thinks that sufficient ground is shown to justify the removal of the checkweigher it must make a summary order for his removal. On the other hand, the mine owner's weigher must not impede, or interrupt the checkweigher in the proper discharge of his duties, or improperly interfere with or alter the weighing machine or the tare in order to prevent a correct account being taken of the weighing and taring.

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The checkweigher is appointed by a majority, ascertained by ballot, of the persons employed in the mine, who are paid according to the weight of the mineral gotten by them whether they are in charge of the working places, or holers, fillers, trammers and the like classes. The act of the majority binds the minority, and all the workers so paid must contribute to his salary as also must new workers who have come in to the mine after the checkweigher's appointment. Special provisions are inserted where there is a contractor who is paid according to weight gotten, and persons working under him who may or may not be paid on that footing. All these persons may vote in the appointment of the checkweigher, but their contributions are payable by the contractor.

The checkweigher is removable by a majority, ascertained by ballot, of the persons who would have the right to vote at the time of removal for the appointment of a checkweigher.

All persons who are entitled to appoint a checkweigher are to be given due notice of the intention to appoint by a notice posted at the pithead or otherwise, specifying the time and place of the meeting, and are to have equal facilities for recording their votes. The chairman of the meeting has to make a statutory declaration as to the appointment, and this declaration must be forthwith delivered to the mine owners and is *prima facie* evidence of the appointment.

It is obvious that for the successful working of these arrangements the workers concerned must have perfect liberty of choice, and the Act of 1894 deals particularly with this point and makes it an offence for the owner, agent, or manager of any mine, either personally or through a person employed by them or acting under their instructions, to interfere with the appointment of a checkweigher, or to refuse to afford proper facilities for the holding of any meeting for the purpose of making such appointment, when the persons entitled to make the appointment do not possess or are unable to obtain a suitable meeting place; or to attempt, whether by threats, bribes, promises, notice of dismissal, or in any other way to exercise improper influence in respect of such appointment, or to induce the persons entitled to vote for a checkweigher or any of them not to re-appoint a checkweigher, or to vote for or against any particular person or class of persons in the appointment of a checkweigher.

Finally it is to be noticed that the Weights and Measures Act, 1878, is applied to all weights, balances, scales, steelyards and weighing machines used at any time for determining the wages

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payable to any person employed in the mine according to the weight of the mineral gotten by him, and these weights, etc., must be inspected and examined by an inspector under that Act once at least in every six months, and also whenever he has reasonable cause to believe that any false or unjust weight, etc., is in use at the mine. The inspector must also inspect and examine the measures and gauges in use at the mines within his district.

These provisions have been stated at some length because they form the basis of the Checkweighing in Various Industries Act, 1919, which came into force on 1st September, 1919, and which contains provisions for the extension of Checkweighing to any suitable industry at the instance of the Home Office.

The Act begins by giving to workmen in any industry to which the Act applies and paid according to the weight of material produced, handled, or gotten by them, a right, notwithstanding any agreement to the contrary, to check the weighing of the material or to test the accuracy of the estimated weight of the material in the manner provided by the Act or by regulations made under it.

The Act is applied forthwith to four industries, but may be extended to any other industry by regulations made by the Home Secretary. These four industries are as follows :—

- (a) the production or manufacture of iron or steel, including any process of founding, converting, casting, rolling or otherwise finishing iron and steel.
- (b) the loading or unloading of goods, whether as cargo or stores, into and from vessels.
- (c) the getting of chalk or limestone from quarries.
- (d) the manufacture of cement and lime.

The rest of the Act is mainly an adaptation of the provisions for Checkweighing in mines to the special circumstances of those four industries.

The 1st sub-section of section 2 brings into force the first schedule, containing detailed regulations for each of the four industries, and these regulations are the mining regulations modified to meet the different circumstances of the four industries. Then in the 2nd sub-section of section 2 there is a general enactment that where the workmen of an industry are authorised to appoint a checkweigher, the checkweigher shall be entitled to station himself at any place appointed for the weighing of material, in order that he may on behalf of the workmen by whom he is appointed take a correct account of the weight of the material,

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and the employer shall afford to him all proper facilities for examining and testing all weighing machines and checking the taring of wagons in which the material is weighed. The 3rd sub-section of section 2 brings into force such parts of the Acts of 1887, 1894 and 1905 relating to Checkweighing and mines as are capable of general application—namely, the 3rd, 4th, 5th, 6th and 8th sub-sections of section 13 and section 14 of the Act of 1887, the 1st section of the Act of 1894 and sub-sections 1, 4 and 6 of section 1 of the Act of 1905, the necessary changes in phraseology being made.

The provisions of the 4th section are new and are to the effect that where at any works the material on the weight of which wages are based is weighed at intervals and not continuously the employer must give to the checkweigher reasonable notice of the time and place at which the weighing will take place. On the other hand, where the checkweigher attends at the place where the industry is carried on for the purposes of his duties at irregular intervals, he must give the employer at least two days' notice of his intention to attend.

Finally the making of regulations for industries to be brought under the Act in the future is to be in accordance with sections 81, 84 and 86 of the Factory and Workshop Act, 1901, with certain necessary adaptations.

There is therefore in this Act an immediate extension of Checkweighing to four new industries and a scheme for its extension to other industries, as required, by the action of the Home Office.

It is now necessary to go back to the first general introduction of compulsory particulars. The hosiery trade and the silk weaving trade were merely two out of a great many textile industries. The Factory and Workshop Act, 1891, made particulars compulsory in all textile factories, and a textile factory means any premises wherein steam, water, or other mechanical power is used to move or work any machinery employed in preparing, manufacturing, or finishing, or in any process incident to the manufacture of cotton, wool, hair, silk, flax, hemp, jute, tow, china-grass, cocoanut fibre or other like material, either separately or mixed together, or mixed with any other material, or any fabric made thereof, excepting the following (a) print, bleaching and dyeing, rope, and hat works, (b) paper and flax scutch mills and (c) lace warehouses.

The provisions as to particulars now appear as section 116 of the Factory and Workshop Act, 1901, and as that section is rather long and complicated the table on the opposite page has been

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(A) PARTICULARS OF RATE OF WAGES

CLASS OF WORKPEOPLE	INDUSTRY	RULES
Weavers	Worsted or woollen (excluding hosiery)	Particulars (a) are to be furnished to the worker in writing at the time when the work is given out (b) are also to be exhibited on a placard.
Weavers	Cotton Trade	Particulars as in (a) above and (b) the basis and conditions by which the prices are regulated and fixed are also to be exhibited on a placard in each room
Every other worker than above	Textile factories generally	Particulars as in (a) above but if the same particulars are applicable to the work to be done by each of the workers in one room they may be exhibited on a placard in that room.

(B) PARTICULARS OF WORK

All workers	Textile factories generally	Particulars as in (a) above except so far as they are ascertainable by an automatic indicator.
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drawn up to assist the reader in mastering its contents and that table, together with the following general observations, should be sufficient. The reader may refer to the Factory Act itself, or to any annotated edition of it, or to *Industrial Law* pp. 169-170, for the actual text of the section. In the first place the section makes it the duty of the occupier of every textile factory, for the purpose of enabling each worker who is paid by the piece to compute the total amount of wages payable to him in respect of his work, to publish particulars (a) of the rate of wages applicable to the work, to be done and (b) of the work to which that rate is to be applied, in accordance with the table on the opposite page, as explained in these observations. Where a placard can be used it is always stipulated that the placard must not contain any other matter, and must be posted where it is easily legible. The section contains detailed instructions as to what must be marked in the case of an automatic indicator, and special penalties are imposed if the occupier fraudulently uses a false indicator, or a workman fraudulently alters an automatic indicator. Particulars either as to rates of wages or as to work are not to be expressed by means of symbols. Special penalties are imposed for the disclosure of particulars for the purpose of divulging a trade secret, both on the worker who discloses and on anyone who solicits or procures such disclosure.

The Factory and Workshop Act, 1895, gave the Home Secretary power to extend these provisions by Special Order to non-textile factories and to most classes of workshops, and that provision now appears in sub-section 5 of section 116 of the Factory and Workshop Act, 1901. It is to the effect that the Home Secretary, on being satisfied by the report of an inspector that the provisions of the section are applicable to any class of non-textile factories, or to any class of workshops, may, if he thinks fit, by Special Order apply the provisions of the section to any such class, subject to such modifications as may be necessary in the circumstances of the case, and he may also apply these provisions to outworkers.

Special Orders have been made applicable to the following industries :—

Making of pens, locks, latches and keys, cables and chains, anchors and grapnels, cart gear, felt hats, artificial flowers, tents, rope and twine, paper bags, paper, cardboard or chip boxes, brushes, nets (other than wire nets) iron safes, curtains and furniture hangings, and files.

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Manufacture of cartridges, tobacco, toy balloons, pouches and footballs from india-rubber, chocolates and sweetmeats.

Making or repairing of umbrellas, sunshades, parasols and sacks.

Making, altering or ornamenting, finishing and repairing wearing apparel.

Making up, ornamenting, finishing and repairing table linen, bed linen and other household linen.

Covering of racquet and tennis balls.

Fustian cutting, relief stamping, fur picking, bleaching and dyeing, printing of cotton cloth.

Warehouse processes in the manufacture of articles of food, drugs, perfumes, blacking, starch, blue, soda or soap.

Processes incidental to the making of lace.

Mixing, casting and manufacturing of brass and of any articles of brass and the electro-depositing of brass.

Laundries.

Building or repairing of ships in shipbuilding yards.

Moulding in iron or steel foundries.

Manufacture or decoration of pottery.

The reader will have noticed that in making these Special Orders the Home Secretary has power to modify the clauses of section 116 of the Factory Act to suit the special circumstances of each industry, and though in legislation on a considerable scale 'Common form clauses' are sure to be made use of, yet there is an individuality about the nineteen Orders which cover the industries which have been enumerated. It would be wearisome to examine these Orders in detail, but it seems worth while to take a typical Order and to describe briefly its contents so far as they illustrate this power of modification, and for that purpose an Order is selected which deals with 'Factories and Workshops in which the under-mentioned processes or any of them, are carried on, and outworkers employed in those processes and the occupiers and contractors by whom they are employed in the manufacture of chocolates or sweetmeats, and any work incidental thereto.' The first point to notice is that as regards written particulars of the rate of wages the occupier or contractor is given three options (1) He may use a *ticket* or other means of furnishing the individual worker with such particulars on each occasion of giving out the work. (2) He may give the worker a *notice* containing the particulars at or before the time of his first employment on any class of work. If a new rate is fixed there must be a new notice stating the new rates and the date from which they are

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to come into operation. If a worker accidentally loses or destroys his notice, the employer must furnish him with a new notice free of charge. (3) He may exhibit in the department of the factory or workshop where the work is done a *placard* containing the particulars. This last provision is not applicable to outworkers.

Particulars of the nature and amount of the work to be done must in general be furnished in writing at the time when the work is given out to the worker. This is what we have called a *ticket*. As regards outworkers, there is no exception to this rule. In the case of persons employed in a factory or workshop where the work is of a standard class which is sufficiently indicated by the materials given out and also is denoted in a placard exhibited as above, and containing the rate of wage for the work by a description or name sufficiently indicating its nature, then no further particulars of the nature of the work need be given. Sometimes particulars of the amount of work on which the worker is to be paid cannot be ascertained in the case of workers in a factory or workshop until the work is completed. In this case, as soon as practicable after the completion of the work, particulars must be given to the worker either by an individual ticket or by a placard exhibited in the department in which the work is done.

The next point is to allow of a modification where the work is done by a gang and the earnings are the common earnings of the gang and not of the individual workers. Here the requisite particulars are (a) the rate of wages applicable to the work to be done by the gang, and, unless the gang divide the earnings at their own pleasure, the proportions according to which the wages of the several members of the gang are calculated, (b) such particulars of the work to be done by the gang as affect the amount payable to the gang. The occupier may either give a ticket to each member of the gang or exhibit a placard in the department in which the work is to be done.

A further point is to allow such modifications as the sub-divisional system may require. If the worker has either to return any written particulars or to hand them on with the work to another worker there must either be a spare copy given to and retained by the worker for his own use, or the worker must be supplied with a book in which to enter the particulars, and this book must be produced when the work is received back by the employer and the entry in it initialled on his behalf if found correct.

CHAPTER III

STATUTORY SAFEGUARDS AS TO THE PAYMENT OF WAGES

As has already been pointed out, legislation against the evils of truck, i.e. payment of wages in goods or otherwise than in current money, has been in existence for more than five hundred years. The earliest Truck Act now in force is the Truck Act, 1831. The scope of that Act was extended by the Truck Amendment Act, 1887, so as to include in place of the workers enumerated in the Act of 1831 all workmen embraced by the general definition of a workman contained in the Employers and Workmen Act, 1875. By the combined operation of the Acts of 1831 and 1887 the protection of both Acts is given to any person (not being a domestic or menial servant) who is a labourer, servant in husbandry, artificer, handicraftsman, miner, or otherwise engaged in manual labour, who has entered into or works under a contract of service, or a contract personally to execute work or labour. The object of the Act of 1831 was twofold. In the first place it prohibited contracts which directly or indirectly made the workman agree to take his wages otherwise than in cash. The bargain must be for wages payable in cash and must contain no terms binding the workman to expend his wages, wholly or partially, at any particular place, or in any particular manner.

In the second place the employer must perform his side of the contract in strict accordance with its terms. The entire earnings of the workman must be paid to him in cash, and payment of wages actually made in goods or otherwise than in cash may be treated as gifts, and the whole of the money wage recovered in a Court of Law. The Act of 1887 made the workman's position even more secure, by prohibiting the payment of wages by orders on tradesmen for goods, and taking away from a tradesman who supplies goods on a master's order the right to sue the workman for the price of such goods. Further, the Acts must not be evaded by the employer laying down as a condition of employment terms as to the expenditure of wages, or by the employer dis-

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missing a workman on account of the way in which the workman has actually spent his wages.

The workman has therefore been very carefully protected on general lines from receiving his wages otherwise than in cash, but in certain industries a system under which the master supplies certain things connected with the industry may, under proper safeguards, be a benefit to the workman because the master has better facilities for providing these things than any individual workman is likely to have. In all industries there are one or two things falling within this principle. Thus, a miner for trade purposes may be supplied by his master with materials, tools or implements; and the price may be deducted from the miner's wages if two conditions are fulfilled. There must be an agreement in writing to that effect signed by the workman, and the deduction must not exceed the real and true value of what has been supplied. So in the case of a workman who uses his own horse in doing his master's work, the master may supply hay, corn, etc., for consumption by the horse, but the deduction of the price from wages can only be made subject to the two conditions already set out in the case of the miners.

There are four subjects of deductions from wages allowable under the Act of 1831 in all industries. The first is in respect of medicine and medical attendance supplied through the master's agency. The Insurance Acts have made this custom obsolete and there is no need to dwell on it.

The second is a deduction for fuel supplied. The writer is not aware that fuel is now customarily supplied to any class of workers other than miners. Here again there must be an agreement in writing signed by the workman and the deduction must not exceed the real and true value. The third exception is house room. The supply of house room by the master is quite a common incident in mining and also in the case of large works where cottages have been erected on the master's premises. There must be an agreement in writing signed by the workman, but there is no stipulation for anything in the nature of a fair rent. This system has undoubtedly in some districts been a solution of a real housing problem, though probably not an ideal solution. It is said that in some cases a tenant workman does not like to ask his employer to do repairs. In the case of a strike it undoubtedly tends to increase the bitterness of the struggle. As no wages are being paid no rent is paid. If the master takes no steps he feels that his workmen, in so far as they are living rent free at his expense, have an unfair advantage. On the other

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hand if the master attempts to evict his workmen tenants, he is held up as particularly inhuman. The fourth exception is the supply of victuals dressed and prepared under the employer's roof and there consumed by the workmen. Employers' canteens are usually run on the system of cash payments, but the employer may supply the meals on credit and deduct the price from the wages payable. The price charged is left to the employer. Deductions can only be made from wages if there is a signed agreement to that effect.

The Act of 1887 made three variations in the general position arrived at under the Act of 1831. First it dealt with the custom of allowing a workman to draw wages in advance of the regular pay day. This is colloquially known as 'subbing.' The aim of the Act is to prevent the employer from arbitrarily withholding customary 'subs,' and from charging for making them. The enactment runs as follows:—'Wherever by agreement, custom or otherwise a workman is entitled to receive in anticipation of the regular period of the payment of his wages an advance in part or on account thereof, it shall not be lawful for the employer to withhold such advances or make any deduction in respect of such advance on account of poundage, discount or interest or any similar charge.'

The next point was to clear up the position of the agricultural labourer. He was not included in the Act of 1831, but comes under it by force of the new definition adopted in the Act of 1887. He has customarily had a cottage and other things supplied by the farmer as part of his remuneration. The Act of 1887 makes it legal for the farmer to make a contract with a servant in husbandry for giving him food, drink (not being intoxicating), a cottage, and other allowances or privileges in addition to money wages. His money wages must of course be paid to him in cash. Under the provisions of the Corn Production Act, ¹ which set up an Agricultural Wages Board, the money wage must be not less than the Wages Board Wage, minus the valuation put on these allowances by the Wages Board.

Finally, in regard to charges for sharpening or repairing tools, no deduction can be made from wages except by agreement not forming part of the condition of hiring, and there must be a yearly audit by two auditors appointed by the workmen of the employer's account of his receipts and expenditure in this connection.

It should be noticed that the Truck Act, 1887, was the first Act to protect a class of home-workers who are not strictly 'earning wages,' as their finished product is bought by a shopkeeper or

¹ This Act has since been repealed.

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dealer. Reference has already been made to a similar section in the Trade Boards Act, 1909. The articles must be made by a person at his own home without the employment of any person under him except a member of his own family. The home-worker is treated as a workman, the shopkeeper or dealer as the employer, and the price is to be regarded as wages. The articles must be under the value of £5, and made up of wool, worsted, yarn, stuff, jersey, linen, fustian, cloth, serge, cotton, leather, fur, hemp, flax, mohair, or silk, bone, thread, silk or cotton lace or of lace made of any mixed materials. This list is apparently not exhaustive. Toys and simple implements of metal are quite suitable for being made at home.

In 1908 a Departmental Committee of the Home Office, after spending two years in taking evidence as to the working of the Truck Acts, 1831, 1887 and 1896, issued a valuable report. It will probably be more simple if its recommendations as to the Acts of 1831 and 1887 are separately considered.

In regard to making deductions for rent, the Committee were divided in opinion. The majority were in favour of prohibiting these deductions and leaving the matter to be settled by free contract entirely separate from the contract of employment. An influential minority thought the existing system was a convenience and saved expense and that this was ultimately to the workers' advantage. Some of the provisions of the Act of 1831 were obviously out of date, such for instance as payments for the education of children. The Committee recommended the abolition of this, and also of the provisions for the supply of hay, corn, etc. The Committee discussed a new point—viz., charges not for meals in a canteen, but for the use of a mess room and its facilities for cooking. The majority favoured a policy of no deduction. If charges were made they must form a separate bargain and be separately paid. The minority thought that the separate collection of payments would add to the expense to the detriment of the workers. This is a little problem that time seems to have solved. Mess rooms are now quite usual and as there has been no fresh legislation, deductions from wages are not legal. The employer who in the past has been public spirited enough to supply mess rooms has had enough goodwill to go a step further and provide them free of charge. At the present time the provision of mess rooms can be made compulsory under Welfare Orders (see p. 273). The scheme for National Health Insurance has made obsolete several questions over which the Committee spent some time.

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As regards cooked meals, deductions from wages are legal, but workers now have so much more money to spend, and during the war have become used to paying cash for their meals in the canteen that probably there will never be again any demand for the supply of canteen meals on credit with a deduction from wages at the end of the week.

Before we pass to the Truck Act, 1896, it will be as well to consider two other Acts which are more nearly related to the Truck Acts which we have already considered, viz., the Payment of Wages in Public-houses (Prohibition) Act, 1883, and the Shop Club Act, 1902.

The former Act was merely the extension to industry generally of what has been law as regards the mining industry since 1842. The payment of wages in public-houses obviously leads to the treating of the foreman or other person who pays the wages and to the expenditure of wages in the public-house by the recipients before they go home. The Act prohibits the payment of wages on licensed premises and penalises both the person who actually pays wages in contravention of its terms and the person who permits another to contravene the Act. Under this latter provision a publican who knowingly allowed his house to be used in contravention of the Act would be liable to a penalty. The Act does not merely punish a foreman or other subordinate who is the actual person to contravene it. The employer himself is liable unless he can prove that he has taken all reasonable means in his power to enforce its provisions and to prevent contravention. The provision by the employer of a proper place at which to pay wages would seem to be a reasonable requirement.

The Shop Club Act, 1902, dealt with the various clubs and societies which prior to its passing provided benefits, generally, but not necessarily, in the form of weekly payments during sickness, to workmen in connection with a workshop, factory, dock, shop or warehouse. Beside the great Friendly Societies, there were many local sick clubs, all based on attachment to some local institution, which at one end of the scale might be a religious body such as an Adult School, and at the other end a local public-house, while others were attached to a particular works. The promoters of all these clubs had a double purpose in mind. One was the promotion of thrift, while the other was to establish a permanent bond, the snapping of which by the workman would place him at some monetary disadvantage. It is obvious that a works club on a compulsory basis might be a means of exercising a good deal of pressure on workmen to remain with their employers while there

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was little or no security that the form of thrift adopted was really sound and advantageous. The former evil was directly contrary to the spirit of the Truck Acts. Week by week deductions would be made from the workmen's wages for an object which we will suppose to be sound. To that extent the workman was deprived of his independence in the spending of his wages. The sounder the scheme from the thrift point of view, the larger became the accumulated value of the deductions and the greater the penalty became if the workman threw up his employment or was discharged. On the other hand, if the scheme was unsound, the workman parted with his wages without any adequate return. There was the further disadvantage that these works clubs were the rivals of the registered Friendly Societies, which were carried on under a fairly stringent system of regulation and inspection, and that works clubs could be and were used both to withdraw members from such societies and to hinder persons from joining them. As a matter of fact, works clubs were as a rule 'dividing out' clubs, in which the greater part of the funds, after paying sickness benefits, were periodically shared between the members. This is a form of club which is actuarially unsound and unfair and depends for its permanent existence on a continual supply of young members. With these general observations in mind it is quite easy to follow the provisions of the Act. The Act is still in force, but the passing of the National Insurance Act, 1911, has very much diminished the practical importance of the Act, though the first section continues to be a valuable additional safeguard to the independence of the worker in regard to his expenditure of his wages.

Under section 1 of the Shop Club Act, 1902, an employer must not make it a condition of employment (a) that any workman shall discontinue his membership of any friendly society, or (b) that any workman shall not become a member of any friendly society other than the shop club or thrift fund.

Under section 2 an employer can only make it a condition of employment that any workman shall join a shop club or thrift fund if such club or fund is registered under the Friendly Societies Act, 1896, and is certified by the Registrar of Friendly Societies. The Registrar, before he certifies the club or fund, must satisfy himself as to three things, (1) That the club or fund affords to the workman benefits of a substantial kind in the form of contributions or benefits at the cost of the employer in addition to those provided by the contributions of the workmen. (2) That the club or fund is of a permanent character and is not a society that

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annually or periodically divides its funds, and that no member upon leaving the employment shall be required to cease his membership except in accordance with section 6, and (3) That 75 per cent. of the workmen desire the establishment of the club or fund.

Under section 6 where a workman by the conditions of his employment is a member of a shop club, then in general on ceasing to be employed he has the option of remaining a member or of having returned to him the amount of his share of the funds of the club, to be ascertained by actuarial calculation.

There is an express provision in the Act that its terms are not to prohibit compulsory membership of any superannuation fund, insurance, or other society already existing for the benefit of persons in the employment of a railway company which itself makes contributions to the funds of such society.

The Truck Act, 1896, deals with the whole subject of deductions from wages as a matter (a) of discipline, (b) of compensation to the master for spoilt work or damaged material, and (c) of charges for services rendered by the employer by way of the supply of materials, tools, standing room, power, etc. It may perhaps be a convenience to use the word 'disciplinary fine' in respect of disciplinary matters, 'deduction' in respect of the master's self assessment of compensation, and 'charge' in respect of the supply of definite articles or benefits by the master to the workman.

It is a matter of some importance in dealing with an Act which has raised a great deal of controversy to try and realise how an employer and workman would stand to each other in regard to these matters if there were no legislation on the lines of the Act of 1896 and they were left to their rights, under the Common Law, either alone or as modified merely by the early legislation as to truck. It has already been stated that it is an implied term of the service of contract that the workman shall submit to the necessary discipline of his employer's business. A breach of such discipline is therefore a breach of contract, but a breach of contract has at Common Law one of two effects. If it is such a serious breach as to affect the whole position of the parties, then the aggrieved party has the right to say that the contract has virtually been put an end to, and that he is no longer bound to perform his part of the contract. In other words, the employer might in these circumstances dismiss the workman without notice. In less serious cases of breach of contract the employer would at Common Law merely have a right of action for damages, but the employer's loss on each occasion of a minor breach of discipline

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would be likely to be so small that the game would not be worth the candle. An employer would hardly care to bring before the Courts a workman for an isolated case of lateness, or a workgirl for not wearing a cap over loose hair when working near dangerous machinery. The employer would fear that if he asserted his legal rights in this way he might get very little sympathy, and might have his case dismissed as trivial, or the workman might be dismissed by the Court with a caution which the employer himself might have administered.

An employer who liked to draw up rules could at Common Law make the observance of those rules part of the contract of service, and could agree with the workman as to what sums should represent the damages which the employer could claim for breach of contract. Under the term 'liquidated damages' the law allows the parties to a contract to settle beforehand what the damages payable for a particular breach shall be. The matter has to be done with care, otherwise the Court is at liberty to say that the sum mentioned is not a true assessment of damage but a 'penalty' which the Court may disregard, and that the damages must be independently assessed by the Court.

It would, however, be possible, though not very easy, to have a series of fines for minor breaches of discipline which would be recoverable in a Court of Law. In form they would not strictly be capable of deduction from wages, but the employer who did deduct them from wages on being sued by the workman for his wages would have been able under the Common Law to counter-claim for breach of contract, and if he made good his claim that the sum deducted was of the nature of liquidated damages for breach of contract he would win his case. It is clear from the decision of the House of Lords in *Williams v. North's Navigation Collieries, Ltd.* (1906, A.C. 136), that the Truck Act, 1831, does not allow the employer to make such deductions. What the Act of 1896 has done with respect to fines for breaches of discipline is to legalise them very much on the lines of the Common Law prior to the Truck Act, 1831, that is to say it allows deductions from wages in respect of such legalised fines, but in so doing it has not merely gone behind the Act of 1831, it has also in practice shifted the burden of proof very much to the disadvantage of the workman. At Common Law if the workman sued the master for the balance of his wages, all the workman would have to do would be to prove that he had been paid less than he had earned, and then the employer would have to prove a definite breach of contract, and that the sum deducted was of the nature of liqui-

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dated damages. Now under the Statute fines are legalised on conditions somewhat less onerous than the Common Law imposed, and the workman who objects to the deduction has to prove that the Act has been contravened. Further the idea becomes prevalent that fines are legal, though there are certain mysterious conditions attaching to them, and the working man and even his Trade Union is very shy of initiating legal controversies which he does not fully understand. Even under the Common Law the workman would understand that the law was on his side, and that he had a right to his wages in full until his employer had proved some rather difficult and intricate points. Under the Act of 1831 no deductions for fines were permissible at all. Under the Act of 1896 the workman feels that the employer, by fulfilling certain easy conditions as to notices, has the law on his side, and that if there is more or less of an appearance of legality in the proceedings he had better say nothing. In the case of unorganised and uneducated workers who quite likely receive a printed ticket each week with an item 'fines' in juxtaposition with an item 'insurance contributions,' the one may very well stand on the same footing as the other.

The actual provisions of the Act of 1896 as to disciplinary fines are as follows:—There must be a contract with the workman authorising fines, but it may be made by the employer putting up a notice and keeping it constantly affixed at a place open to the workman, and in such a position that it may be easily read and copied by any person whom it affects. As an alternative there may be a contract in writing signed by the workman. This alternative form generally consists of a book of rules with a space at the end for the workman's signature below a form of acceptance of the rules.

The contract, whatever its form, must specify the acts or omissions in respect of which the fine may be imposed, and the amount of the fine or the particulars from which the amount may be ascertained. Further, the specified acts or omissions must be such as to cause or to be likely to cause damage or loss to the employer or interruption or hindrance to his business and the amount of the fine must be fair and reasonable. Particulars in writing showing the acts or omissions in respect of which the fine is imposed and its amount must be supplied to the workman on each occasion. It should be carefully noted that this part of the Act applies to shop assistants as well as workmen.

The Act draws a distinction between the workman who at once disputes the legality of a fine, and one who at the moment

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consents to or acquiesces in its deduction from his wages and then subsequently makes his objection. As the workman knows that the probable result of objecting to a fine will be dismissal he often acquiesces for the time being, and only takes his objection when he has been dismissed and can safely do so. The Act gives the workman the general right to recover the sums deducted by the employer contrary to the Act so long as proceedings are begun within six months from the date of the deduction. If the workman at once disputes the legality of the fine and wins his case then he is entitled to recover the whole amount deducted, even in cases where the employer was right in imposing a fine of some sort but failed to show that the fine in question was fair and reasonable. On the other hand, if the workman proceeds after acquiescence then he can only recover the excess of the fine over and above what the Court may find to have been fair and reasonable having regard to all the circumstances of the case. This question of disciplinary fines was considered by the Departmental Committee already referred to. It was generally agreed that something must be done to alter the law as it stood and the decision lay between tolerating disciplinary fines so long as they were not serious in amount, or abolishing the system altogether. The majority were in favour of the former course and proposed to limit fines in any one week to 5 per cent. of the wages for that week, and to prevent arrears being carried forward to any subsequent week. They also proposed to make the administrative side of the Act more effective. The minority were in favour of abolishing these fines altogether and as they expressed their opinion quite tersely, the following extract is given:—‘In our opinion disciplinary fines fail in their purpose. We believe them to be not merely negative in good but active in harm, inasmuch as they maintain and even create the very situation they are designed to destroy. Irritating in their imposition and ineffective in their result, they occupy in the organisation of industry, where they exist, the place that should be held by supervision.’

The writer has had some direct experience of disciplinary fines and is inclined to share the opinion so forcibly expressed by the minority.

There was one new point discussed by the Committee, and that was whether anything could be done where a bonus was given by employers to promote punctuality, good discipline, etc., and then the bonus was withheld if the desired effect was not produced. If the employer pays good wages irrespective of the bonus,

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then the extra gain afforded by the bonus to steady workers is all to the good, but where wages and bonus together are not more than a fair wage, the deduction of the bonus may in effect constitute a very serious fine, and as the Truck Acts stand there is nothing illegal about it. A rather striking case came before the writer's notice quite recently. While Trade Board rates were being fixed in this district for women over eighteen at figures varying roughly from 27s. 6d. to 35s. per week, an employer not covered by Trade Board legislation offered to put on women at 25s. a week with a 5s. bonus for good time keeping. It is obvious that the 30s. thus payable to a steady worker is no more than a fair wage, and that the deduction of 5s. for losing time, which is often inevitable in the case of female workers, was a fine far beyond anything that could be regarded as fair and reasonable. It amounts to a reduction of the hourly wage from $7\frac{1}{2}$ d. per hour to $6\frac{1}{2}$ d. per hour. As a percentage it is 20 per cent. on the woman's actual wage for the week, as compared with the 5 per cent. which the majority report accepts as the maximum. The majority report proposes that where it is shown that a bonus is liable to be withheld as a punishment for unpunctuality, breaches of discipline, etc., the Court should have power, after considering all the circumstances of the case, to decide whether the bonus is used by the employer as a means of evading the requirements of the statute, and in the event of its deciding that it is so used to convict the employer.

The very considerable extension of Trade Boards is fortunately doing something to check these abuses. Under the provisions of the Trade Boards Acts the wages paid must be not less than the minimum rate, clear of all deductions, and the term deductions include deductions for or in respect of any matter whatsoever (other than deductions under the National Insurance Act, 1911, as amended by any subsequent enactments or deductions authorised by any Act to be made from wages in respect of contributions to any superannuation or other provident fund) and notwithstanding that they are deductions which may lawfully be made from wages under the provisions of the Truck Acts, 1831 to 1896, and where any payment being a payment authorised to be received by an employer under section 1 ('disciplinary fines') section 2 ('deductions') or section 3 ('charges') of the Truck Act, 1896, is made by any employed person to his employer, the employer shall for the purpose of this provision be deemed to have deducted that amount from wages.

So far we have only considered disciplinary fines under section 1

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of the Truck Act, 1896, though the provisions already given as to the different treatment of the workman who disputes at once the legality of a fine and of the workman who at the time acquiesces in the fine and the provisions of the Trade Boards Act apply equally to sections 2 and 3 dealing with 'deductions' and 'charges,' and it will not be necessary to repeat these provisions. Section 2 deals with deductions in respect of bad or negligent work, or injury to the materials or other property of the employer. As in section 1, there must be a contract made either by the exhibition of a placard or in writing signed by the workman; the deduction must be fair and reasonable; and particulars in writing showing the acts or omissions for which the deduction has been made must be supplied. Further, the deduction must not exceed the actual or estimated damage or loss occasioned to the employer by the act or omission of the workman.

In considering this section the Departmental Committee is again divided in opinion. The majority would give the employer the option of treating careless work and injury to materials, etc., as an occasion for a disciplinary fine, which, as already has been said, would necessarily be quite a small fine, or for proceedings against the workman for breach of contract or negligence under the Common Law. Any damages awarded to the employer by the Court could not under the terms of the decision already quoted be deducted from wages accruing to the workman. The minority again decide against anything in the nature of disciplinary fines. "The deduction for bad work becomes the disciplinary fine for carelessness, a worker, helpless in the one case, is helpless in the other. Where the fault is in fact one of carelessness and its repetition is continued, stronger measures in our opinion would serve best the lasting interest of both worker and employer."

The writer has had considerable experience in trying cases in which a worker has been dismissed for damage to work or 'making scrap,' and no other class of case presents so many difficulties. It is to be remembered that the most careful workman is sometimes liable to make a slip, and that the human machine cannot be guaranteed to act faultlessly. Further, the attitude of the foreman, and very often of the employer, depends to a large extent on the value of the work damaged. A girl carelessly spoils half a gross of articles, the value of which is a few pence. The result being trivial, the offence is considered to be trivial. An experienced man, momentarily below par or with his attention suddenly diverted, spoils a piece of work worth £20. As the result is so serious, nine foremen out of ten will jump to the conclu-

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sion that there has been a serious offence. Again, where accuracy is specially demanded, the workman should be paid for accuracy, rather than for speed, yet in many cases he will be put on piece work, and tempted to work too fast. While the work turns out well both the worker and the employer are pleased, but when work is scrapped the worker is fined or dismissed, though the employer's system may be just as much at fault as the worker. The clear cases are those where the carelessness is repeated, and as the minority point out, in those cases dismissal is far more satisfactory than any fine. In the writer's opinion there is good ground for supporting the view of the minority.

Section 3 deals with charges for or in respect of the use or supply of materials, tools or machines, standing room, light, heat, or any other thing to be done or provided by the employer in relation to the work or labour of the workman. There must be a contract on the usual lines, and particulars of the charges must be furnished to the workman. The charge under the contract must not exceed in the case of materials or tools supplied to the workman the actual or estimated cost to the employer, or in the case of machinery, light, heat, or any other thing, a fair or reasonable rent or charge, having regard to all the circumstances of the case.

In regard to this section the Departmental Committee made several recommendations. As regards material of small value, such as glue, thread, paste, twine, etc., which go into the substance of the fabric or product, the Committee recommended that no deductions or payments should be allowed.

Again, no deductions or payments should be allowed in respect of the use of tools, machinery, standing room, light, heat, etc., but wages rates should be adjusted so as to give the employer a proper return. In this case the employer would have power to recover in a Court of Law any loss suffered by him through the misapplication of the workman of tools, etc., which were the property of the employer.

The Committee thought, however, that the provisions of section 3 might be maintained so far as regards tools, etc., supplied by the employer which became the property of the worker, and so far as regards special services rendered by the employer in connection with the work or labour of the workman.

The only other section of the Act of 1896 which need be examined is section 6, which deals with the administration of the Act.

The factory and mine inspectors are responsible for seeing that the Truck Acts are properly administered, and in particular

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they can demand in writing that an employer shall produce to them contracts under the Act of 1896, and on the production of such contracts they may make copies of them.

The employer must keep a register of disciplinary fines, deductions and charges, and this register can be inspected at any time by the inspectors.

Then the workman himself is given certain personal rights. A copy of any written contract which the workman or a shop assistant signs must be given to him on his becoming a party to it, or if the terms of the contract is contained in a notice or placard, then a copy of the notice or placard. Such a copy can also be demanded by the workman or shop assistant at any subsequent time free of charge.

There is one trade and one trade only in which a special Truck Act is in force, and its terms have a good deal of bearing on the controversial matters arising out of the passing of the Truck Act, 1896. This is the Hosiery Manufacture (Wages) Act, 1874. The Departmental Committee considered that if their recommendations as to charges were carried out by legislation then this particular Act could be repealed. The principle of the Act is in direct conflict with section 3 of the Act of 1896. From the preamble it is clear that it was specially passed to stop charges for the letting out by employers to workpeople of frames and machinery, though it contains some general provisions as well. Under section 2 all contracts to stop wages and all contracts for frame rents and charges between employers and workpeople are declared illegal. Then by section 3 a penalty is imposed upon any employer who bargains to deduct, or directly or indirectly deducts, from the wages of any of his workpeople any part of such wages for frame rents, and standing or other charges. On the other hand, section 4 puts a penalty on a worker who allows a frame or machine entrusted to him by his employer to be used without the employer's written consent in the manufacture of any goods or articles whatever for any other person.

CHAPTER IV

STATUTORY FACILITIES FOR RECOVERING WAGES

IF either party to a contract fails to carry out his part of the bargain, the law gives to the party aggrieved a right to sue the party in default for damages in a Court of Law. The main Court in this country is the High Court of Justice, sitting in London, and the Assize Courts held in the provinces when the judges go on circuit. Litigation in these Courts is subject to a certain amount of delay and to a good deal of expense, and a workman is in general well advised to keep clear of them. The recovery of wages in these higher Courts would be a procedure about as absurd as cracking nuts with a steam hammer. There are two alternatives to the High Court, one is the County Court, which deals with practically all civil cases, but with a statutory limit to the amount which can be claimed, and the other a Court of Summary Jurisdiction, often spoken of as the Police Court, which deals with minor criminal matters, but has also a fairly extensive civil jurisdiction. In the case of wages claims for £10 or under a Court of Summary Jurisdiction composed of a stipendiary (or paid) magistrate, or of two or more Justices of the Peace, is the more speedy and the less costly tribunal. The jurisdiction of a Court of Summary Jurisdiction was created by the Employers and Workmen Act, 1875, and the definition of a workman for the purposes of the Act has already been given in dealing with the Truck Act, 1887.

The jurisdiction of the County Court arises under the various County Court Acts which have been passed and at the present moment in the case of breaches of contract the limit of the amount which can be claimed is £100.

If the employer is an individual or a partnership, and he or they are insolvent and a receiving order has been made, then legal proceedings will in general be no longer possible, and the claim of a workman for his unpaid wages becomes a claim in the employer's bankruptcy. For reasons which are obvious a work-

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man is given a preferential claim on the bankrupt's estate, but he shares this preferential position with certain other classes of creditors, and for a strictly defined amount of wages. Preference is given to all wages of any labourer or workman not exceeding £25, whether payable for time or for piece work, in respect of services rendered to the bankrupt during two months before the date of the receiving order.

On the same lines where the employer is a company registered under the Companies (Consolidation) Act, 1908, and a winding up order has been made, instead of being able to take legal proceedings for unpaid wages, a workman must claim in the winding up and will be a preferential creditor on the same lines as in the bankruptcy of his employer.

In the case of non-manual workers, such as clerks, etc., there is no remedy for wages or salary in a Court of Summary Jurisdiction. On the other hand, in the case of the bankruptcy or winding up of the employer, or the employing company, the preferential payments extend to £50 or four months' earnings, whichever is the smaller sum.

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SECTION III

TIME CONDITIONS IMPOSED BY THE STATE (COMPLETE AND PARTIAL PROHIBITIONS)

INTRODUCTION

THE subject of this section will be all those conditions imposed by the State on the use of labour which have a time element. They will range from complete prohibitions to such minor matters as statutory holidays and statutory meal times. It will be most convenient to differentiate by sex and age as far as possible. The most complete classification is that of the Factory Acts, which recognise four classes—viz., children, young persons, women and men. The class of young persons under the Factory Acts is really a variable class, that is to say though a general definition is given of a young person as one who is over school age and under eighteen, yet in particular cases boys over sixteen are exempt from the regulations which apply to young persons generally. In the same way under other statutes adult regulations sometimes apply at sixteen instead of eighteen years of age, but there is in general a class interposed between the child at school and the adult, and the term 'young persons' is the most convenient term to adopt for that intermediate class. A good deal of interest and value attaches to the various stages through which State interference has passed, and to a considerable extent the subject will be treated historically.

There is a very close connection between this section and the two following sections on the State and the safety of the worker and the State and the health of the worker, and one reason for taking together all these regulations in which there is a time element is that it is not always easy to classify them. A prohibition against cleaning machinery in motion applied to persons of a certain age is obviously a safety regulation, while a prohibition against working on a lead process is obviously a health regulation, but a prohibition against working excessive hours may be both a safety regulation and a health regulation. Further,

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the demand for shorter hours arises nowadays not merely from the physical point of view. The working classes are now demanding leisure for its intellectual and emotional possibilities. It has seemed better therefore to make a separate section for these complete and partial prohibitions, leaving it to the reader to grasp the connection of the prohibition with the health, safety or general welfare of the worker.

CHAPTER I

HISTORY DOWN TO THE PRESENT GENERATION

SOME of the worst horrors of the early years of the factory system were due to an application of the Elizabethan Poor Law Act of 1601, to purposes which were never contemplated by its authors. That Act was primarily directed to the suppression of the evil of mendicancy. We are apt to link together mendicancy and monasteries, but mendicancy survived the suppression of the monasteries by two or three generations. Thus a survey of Sheffield made in 1615 revealed the fact that out of its 2207 inhabitants there were no less than 725 begging poor. These were not vagrants, but persons wholly or partially dependent on charity. An obvious solution was to train children in independence by apprenticing them to trades which would furnish a livelihood. Under the Act of 1601 it was one of the main duties of the overseers of each parish to apprentice children 'whose parents shall not be thought able to feed and maintain' them and to keep them apprenticed till they were independent. At this time there was no object to be served in sending children away from their own parish unless some exceptionally good opening presented itself elsewhere, and the overseers were under no special temptation to use their powers under the Act except for the good of the children. The Act of Settlement of 1662 changed the situation for the worse. 'In apprenticing boys the great thing was to find, not masters well able to teach their trade, but masters living in other parishes, since the apprentice obtained a settlement in the parish in which he was bound.'¹

The introduction of the factory system created a great demand

¹ *The English Poor Law System*, Aschrott & Preston—Thomas, p. 13.

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for child labour, which the overseers were only too ready to provide in the form of pauper apprentices. The preamble to the Health and Morals of Apprentices Act, 1802, recited that it hath of late become a practice in cotton and woollen mills and in cotton and woollen factories to employ a great number of male and female apprentices and other persons in the same building, in consequence of which certain regulations are become necessary to preserve the health and morals of such apprentices and other persons. The Health and Morals of Apprentices Act, 1802, was a failure from an administrative point of view, but its provisions are nevertheless interesting. Night work between 9 p.m. and 6 a.m. was prohibited for apprentices, who corresponded roughly in age to two modern classes—viz., children and young persons. In the fifteen hours between 6 a.m. and 9 p.m. a twelve-hour day was allowed, but in the first four years of apprenticeship work was combined with instruction of a sort in reading, writing and arithmetic.

The first legislation for children as distinguished from apprentices is to be found in two Acts of 1819 and 1820, which applied only to cotton mills, i.e., places where cotton wool was prepared and spun. Limited as was the scope of the operation of these Acts, they introduced some important principles—namely, (a) absolute prohibition of child labour below a certain age, which in this case was nine years of age, (b) a period of employment for older children which excludes night work, the details being that children between nine and sixteen were not to work between 9 p.m. and 5 a.m., (c) a limit to the day's work, in this case a twelve hours day, and (d) definite time allowances for meals, in this case a breakfast interval of half-an-hour. An Act of 1825 still limited to cotton mills is worth noticing on account of its introduction of *a shorter working day on Saturdays*, when only nine hours work between 5 a.m. and 4.30 p.m. was permissible.

In 1831 twelve hours work per day was made the maximum for all persons in cotton mills under the age of eighteen instead of sixteen, and night work was prohibited for all persons under twenty-one.

In 1833 a really important step forward was made, in that the Factory Act of that year was made applicable to practically all textile mills. The provisions of the Act embraced cotton, woollen, worsted, hemp, flax, tow, linen, and silk mills driven by steam or mechanical power, but expressly exempted lace-making and certain subsidiary industries connected with woollen goods.

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So far as this Act followed the earlier Acts, it would be wearisome to go into details and only new points will be noticed. The new principles introduced were as follows :—

(1) There were now two classes between the ages of nine and eighteen, *and the distinction between 'children' and 'young persons'* is thus introduced. Children are those between nine and thirteen years of age. Their working hours were not to exceed nine hours a day or forty-eight hours a week. They were also to have two hours schooling per day for six days a week, and in return for providing this the employer might stop a penny in the shilling from their wages towards the payment of the schoolmaster.

The working hours of young persons between thirteen and eighteen were limited to twelve hours a day and sixty-nine hours a week, these hours being adopted from the Act of 1825.

(2) *Compulsory holidays were introduced* for children and young persons. The days selected for holidays were Christmas Day, Good Friday and eight half-days.

(3) *An elementary form of a certificate of fitness for children was introduced.* This did not go beyond a certificate by a surgeon that the child had appeared before him and submitted to his examination, and was of the ordinary strength and appearance of a child of at least nine years of age.

This Act of 1833 is also distinguished by its introduction of the principle of Government inspection, but that is not the subject of this section, so that all that need be said is that from this time forward factory legislation becomes effective and progressive.

The next legislation to be noticed is Lord Ashley's Act of 1842, which was an Act "to prohibit the employment of women and girls in mines and collieries, and to regulate the employment of boys, and to make other provisions relating to persons working therein."

The prohibition of the employment of women and girls underground was absolute; in the case of boys there was to be no employment underground below the age of ten years. We also find in this Act the first legislation in which an age limit for work is fixed in order to secure safety for other workers as well as less strain on the person employed. Where a steam or other engine was in use at a mine for bringing persons up and down the shafts, it was not to be in the charge of a person other than a male of fifteen years of age or over.

In 1844 the entire Factory Act of 1833 was amended in several important matters relevant to the subject matter of this section.

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(1) Certificates of fitness were put substantially on their present footing. The certifying surgeons were appointed by the inspectors. Separate certificates of age and fitness were required for children and young persons, and in each case the certificate had to state that the child or young person was not incapacitated by disease or bodily infirmity from working daily in the particular factory for the time allowed by the Act.

(2) *The hours of women over eighteen were for the first time limited,* and they were included with young persons.

(3) A substantial reduction was made in the hours for children. Instead of being allowed to work forty-eight hours and sent to school for twelve hours, they were only allowed to work thirty hours, and were to go to school for fifteen hours. This is the half-time system, which, with certain alterations of age limits, has remained in force until the passing of the Education Act, 1918. This reduction in the hours of child labour was unfortunately accompanied by the retrograde step of allowing a child to go to work at eight instead of nine.

(4) Children and young persons were prohibited from cleaning the mill gearing when it was in motion.

In 1845 a certain amount of protection was given to children, young persons and women outside textile factories by the Print Works Act, 1845. This was the first application of legislation to textile works, and though printing was considered ripe for legislation, bleaching and dyeing were definitely excluded from the Act. The provisions of the Act were very half-hearted. Children under eight years of age were not to be employed. Between eight and thirteen years of age they were not to be employed between 10 p.m. and 6 a.m., and some restriction on their day-time employment was afforded by the necessity for producing a certificate of school attendance. This was a half yearly certificate, and it had to show thirty days' school attendance of unspecified duration; while two years later further attendance at school was secured by making the minimum school attendance 150 hours in the half-year, which is equivalent to thirty days attendance of five hours a day. Over the age of thirteen the only restriction was in the case of females, and it took the form of a prohibition of night work. In 1847, after years of agitation, the hours in textile factories were reduced in the case of women and young persons to ten hours per day and fifty-eight per week, and this Act is commonly known as the Ten Hours Act. This Act was not as successful as its promoters hoped, because the ten hours could be worked at any time between 5.30 in the morning

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and 8.30 in the evening, and in busy times manufacturers kept their machinery running for the whole fifteen hours, and women and young persons were worked in irregular relays, so that they did not get the benefit of the extra leisure, and the work of inspection was immensely complicated. 'The system which they seek to introduce under the guise of relays is some one of the many plans for shuffling the hands about in endless variety, and shifting the hours of work and of rest for different individuals throughout the day, so that you may never have one complete set of hands working together in the same room at the same time.'¹ This practice led to the introduction in 1850 of the *normal twelve hour period of employment* for women and young persons, with a fixed working day in summer from 6 a.m. to 6 p.m., of which ten and a half hours could be given to work and one and a half hours to meals. In winter the employer had the option of working the factory between 7 a.m. and 7 p.m.

Between 1850 and 1860 there was little legislation, and we need only note that the normal twelve hour range of hours of employment was extended to children in 1853. In 1860 bleaching and dye works, which were excluded from the Print Act of 1845, were brought under the same kind of regulations, and during the next four years practically all the subsidiary processes in textiles were regulated.

In the same year, 1860, a further step was made as regards boy labour in mines. The age at which boys in general could work underground was raised to twelve, but in the case of boys who obtained a certificate that they could read or write, a sort of half-time system was introduced between the ages of ten and twelve, as these boys could go down the mine, provided they continued their education to the extent of putting in two days a week or three hours a day at school. Further, the age of persons in charge of the engines, which raised and lowered the workers in the mine, was increased from fifteen to eighteen years of age. Readers will have realised that up to this time there had been no general interference with hours of labour, and that restrictive legislation was confined to textile factories and works and to mines. There is evidence that in 1862 many children were entering the pottery trade as early as six, seven and eight years of age. In other trades, which are now regarded as 'dangerous trades,' children were being kept at work in the busy season for fourteen hours a day and even longer. In 1864 six industries were brought under the existing Factory Acts on account of their being unhealthy

¹ Report of Inspectors of Factories for 1849, *Parly. Papers*, vol. 22, p. 225.

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trades. These six industries were the making of earthenware, lucifer matches, percussion caps and cartridges, and paper staining and fustian cutting.

In 1867 the whole question of the regulation of factory and workshop labour came up for consideration in Parliament and a great deal of fresh ground was covered by two Acts of Parliament—viz., the Factory Acts Extension Act, 1867, and the Workshops Regulations Act, 1867. The first Act was an Act for extending the existing Factory Acts to fresh industries, and the factory hours which have already been set out now became applicable to children, young persons and women in 'blast furnaces, copper mills, mills or forges in which any process is carried on for converting iron into malleable iron, steel, or tin plate, or for making or converting steel; iron foundries, copper and brass foundries, premises in which power is used for the manufacture of machinery, metal articles and gutta percha; any premises in which paper, glass or tobacco manufacture, letterpress printing or bookbinding is carried on; and finally any premises in which fifty or more persons are employed in any manufacturing process.'¹ This particular Act is much complicated by additional restrictions in some industries and special relaxations in others. Thus, no boy under twelve and no woman was to be employed in melting or annealing glass, and no child under eleven was to be employed in grinding in the metal trades. On the other hand in several industries boys completely or partially passed into the adult class at sixteen and so were allowed to work at nights, or to work hours considerably in excess of the normal. This was the beginning of general legislation with special exceptions which even now makes English Factory Acts such a tangle.

The second Act, the Workshops Regulation Act, 1867, applied to establishments where less than fifty persons were employed, and where children, young persons or women were at work, so long as they were not already included in existing factory legislation.

Under this Act no child under eight years of age was to be employed in any handicraft.

This is the first general prohibition of child labour. Children from eight years of age to thirteen could be half-timers, but with only ten hours schooling per week instead of fifteen under the Factory Acts, and the period of employment had the wide range of 5 a.m. to 9 p.m.

So far the reader will have noticed that there have been several references to a system under which children were allowed to work

¹ Hutchins & Harrison, *History of Factory Legislation*, p. 168.

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on condition that they also received so many hours a week school instruction. These provisions were the only form of compulsion so far applied to the education of children, and they were of course worth very little. The point to be noted is that the slowness which characterised the growth of legislation dealing with the evils of child labour was directly connected with the extraordinary apathy of the nation and Parliament in the matter of the education of children. As long as there were insufficient schools, and such schools as were in existence were inefficient, it was impossible to make out a really strong cause for restrictive legislation. It was easy for the occupiers of factories and workshops to say that they were the children's best friends, that, they found children of eight years of age and upwards something to do and kept them out of mischief, and that there was some guarantee that the children they employed had some sort of schooling, whereas in the case of the unemployed child there was no guarantee of any schooling whatever. Until two things could be said together: first, that the place for the child was in the school and not in the factory or workshop, and secondly, that there was a place in an efficient school for every child, adequate legislation to restrict child labour was not a practical possibility. 'Factory legislation, as regards children, was doubtless kept back for generations for want of an effective Education Act, and it is rather interesting to notice the mutual re-action of the two causes; education is made the motive and object of restricting children's hours of work, and then the factory inspectors in their turn become promoters or furtherers of State Education, because they realise that only thereby can the restriction of hours become effective.'¹ Now that we have reached the year 1867 we find both education and factory legislation making comparatively quick strides and marching forward side by side. It seems appropriate that the last and biggest step of all should be made by the Education Act, 1918, and not by an Employment of Children Act or a Factory Act. The Education Act, 1870, was the somewhat delayed outcome of the Report of the Duke of Newcastle's Commission on Elementary Education which had reported in 1861. The findings of that Commission were briefly that only two-thirds of the children of the working classes were attending any school at all, and that as only a small proportion remained long enough under efficient teaching to get permanent benefit, it could not be said that more than one child in seven was getting satisfactory instruction. The object of the Education Act, 1870, was to pro-

¹ Hutchins & Harrison, *History of Factory Legislation*, p. 79.

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vide a place in an efficient school for every child of school age, and steps were taken to ensure this provision within a year or two and to promote efficiency by State grants. There was still no general compulsory school attendance.

The earliest modification of hours of labour after the Education Act, 1870, is to be found in the two Mines Acts of the year 1872, the Coal Mines Regulation Act, 1872, and the Metalliferous Mines Regulation Act, 1872. It will be sufficient if we notice the provisions of the Coal Mines Act. The age for male labour underground was still retained at ten years, but for boys between ten and twelve years of age a limit of hours was introduced which was thirty hours per-week under one system, and thirty-six hours under a second system, while attendance at school was raised from twelve hours a fortnight to twenty hours. A new class of male young persons between the ages of twelve and sixteen was introduced, and for this class there was a limit of ten hours work per day and fifty-four hours work per week.

For work above ground girls and women were eligible, and apparently for this reason the restrictions on labour above ground were more stringent.

The children's class lay between the ages of ten and thirteen, and that of young persons between thirteen and sixteen. Hours of work for these classes were substantially the same as for the underground workers, but children, young persons and women employed above ground were not allowed to work at nights (9 p.m. to 5 a.m.), on Sundays, or after 2 p.m. on Saturdays.

In 1874 the textile trades, after a twenty years' pause, were able to secure further restrictions on the hours of labour. After 1875 no child under ten years of age was to be employed in a textile factory, and childhood was to last until fourteen instead of thirteen, but subject to a provision that a child of thirteen who obtained an educational certificate would then pass into the class of young persons. Further the actual working day of ten hours was once more restored by making a compulsory deduction of two hours for meals from the twelve hours' period of employment. As this two hours for meals enabled three breaks to be made in the working day, namely an hour for dinner and half an hour for tea and breakfast, the longest stretch of work allowed to children, young persons and women without a break of at least half-an-hour was reduced to four and a half hours. The two hours for meals and the limit of continuous work to four and a half hours is still the exclusive legal privilege of workers in textile factories.

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In 1878 the existing Factory and Workshops Acts were swept away and replaced by a Consolidating Act. The distinction made in 1867 between places where less than fifty persons and places where fifty or more persons were employed was not continued, and the present classification as far as children, young persons and women are concerned was adopted. The various kinds of workplaces legislated for were either (1) textile factories, (2) non-textile factories, (3) workshops employing women, young persons and children, (4) women's workshops, or (5) domestic workshops. For women and young persons the stricter legislation for textile factories than for non-textile factories and workshops was continued, but in regard to children the latter places were brought up to the level of the textile factories by the simple enactment of section 20 that a child under the age of ten years should not be employed in a factory or workshop.

The recognition of women's workshops, 'conducted on the system of not employing therein either children or young persons,' was a step brought about by a wave of individualistic idealism which believed that where adults were alone concerned matters of hours ought to be left to the good sense and increasing intelligence of the people themselves. The hours for these workshops were any twelve hours, less one and a half hours for meals, which the employer might select between 6 a.m. and 9 p.m. The Act of 1878 was mainly a Consolidating Act, and the only other new point that need be mentioned was a prohibition of the employment of children and young persons in certain branches of the white lead and other similar industries.

The Act of 1878, with its prohibition of child labour in factories and workshops under the age of ten, was in 1880 supplemented by an educational enactment which made school attendance compulsory on all children under that age.

No further advance with regard to children was made till 1887, when the Coal Mines Regulation Act prohibited the work of children under the age of twelve years either below ground or above ground in coal mines as defined by the Act.

Up to this time there was no interference with the hours of adult male labour.

CHAPTER II

. RECENT LEGISLATION FOR CHILDREN

So far it has been convenient to deal with children, young persons and women together (there has been nothing to say about men), but now that this brief historical sketch has been brought down to the present generation it will be more convenient to consider these classes separately, and the employment of children will first be considered.

In 1889 there was passed the first Act which dealt with the Prevention of Cruelty to Children, and under that heading dealt with the employment of children in public entertainments on the lines of prohibiting their employment below a certain age except by licence. Subsequent legislation as to this class of employment was continued and amplified in an Act of 1894, and the law as it is now in force is contained in the Prevention of Cruelty to Children Act, 1904, as modified by the Children Act, 1908, and the Education Act, 1918. The general effect of the Children Act, 1908, was to consolidate and extend the existing law for the general protection of child life in all aspects other than their employment. It will be more convenient to defer a statement of the law as to the employment of children in public entertainments until the Education Act, 1918, is dealt with.

As regards the employment of children in factories and workshops, the only new points to note are the gradual raising of the age at which employment becomes legal. In the Factory and Workshop Act, 1891, a provision was inserted that after 1892 no child should be employed below the age of eleven years, and by the Factory and Workshop Act, 1901, which is the main Act now in force, the age of twelve years was substituted for the age of eleven years.

The system of half-time employment of children between the age of twelve and the age at which they become young persons is now put an end to by the provisions of the Education Act, 1918, and here again it will be convenient to postpone consideration

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of those provisions. Readers who are interested in the details of the half-time system are referred to the writer's *Industrial Law*, pp. 138-143.

There was similar progressive legislation with respect to mines, the age limit being higher here than for factories and workshops. In 1900 the Mines (Prohibition of Child Labour Underground) Act prohibited child labour underground in both coal mines and metalliferous mines below the age of thirteen years. Then in 1911, as far as coal mines were concerned, the age was raised to fourteen years. No further alteration was made till the passing of the Education Act, 1918.

In 1903 a new departure was made by the passing of the Employment of Children Act, 1903, which dealt with the whole question of children's employment outside factories, workshops, and places of public entertainment.

Children are defined as boys and girls under the age of fourteen. The main provisions of that Act were as follows :—

- (1) Night work for children was in general prohibited. Night-work meant work between 9 p.m. and 6 a.m. Power was, however, given to local authorities to vary those hours by bye-law.
- (2) Half timers under the Factory and Workshop Act, 1901, were not to be employed in any other occupation.
- (3) A child was not to be employed to lift, carry or move anything so heavy as to be likely to cause injury to the child.
- (4) A child was not to be employed in any occupation likely to be injurious to his life, limbs, health, or education, regard being had to his physical condition.
- (5) Street trading was prohibited in the case of children under eleven years of age.

Further, the Act gave power to local authorities to legislate by bye-laws for the further protection of children in their districts.

(A) The local authority could prescribe for all children, or for boys and girls separately, and with respect to occupations in general, or to any specified occupation—

- (1) the age below which employment was illegal,
- (2) the hours between which employment was illegal, and
- (3) the number of daily or weekly hours beyond which employment was illegal.

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(B) The local authority could prohibit absolutely or permit subject to conditions, the employment of children in any specified occupations.

The Education Act, 1918, has made substantial amendments in this Act, with the result that the local authorities who had made bye-laws are now engaged in revising them, and the time has not yet come for a tabulation of this local legislation.

We are now in a position to examine the employment clauses in the Education Act, 1918. The provisions of the Act are simple in themselves, but the general position is much complicated by the machinery adopted for bringing the Act into operation. The Act comes into operation on appointed days fixed by the Board of Education, and different days may be appointed for different purposes and for different provisions and for different areas, and for different persons or classes of persons.

The general lines on which the Education Act, 1918, proceeds is that the proper place for the child is in the school, and that out of school hours a child should not be employed to such an extent as to impair its receptivity during school hours, and that so far as licences for the employment of children in public entertainments are concerned the local education authority is more competent to grant licences than is a bench of magistrates. Finally, the establishment of a school medical service enables a local education authority to deal effectively with individual children who may be suffering from their employment out of school hours, though such employment may be legal and in general innocuous.

The first point we must consider is the definition of the word 'child.' Under section 48 it means any child up to the age when his parents cease to be under an obligation to cause him to receive efficient elementary instruction or attend school under the enactments relating to elementary education and the bye-laws made thereunder.

Section 8 gives the obligations as to school attendance.¹ Under sub-section 1 of that Act no exemption from attendance at school can be granted to any child between the ages of five and fourteen. Any bye-law which names a lower age than fourteen as the age up to which a parent shall cause his child to attend school shall have effect as if the age of fourteen were substituted for that lower age.

Under sub-section 2 of section 8 fifteen years is to be substituted for fourteen years as the maximum age up to which bye-laws

¹ Section 8 is now in force throughout the country.

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relating to school attendance may require parents to cause their children to attend school, and any such bye-law requiring attendance at school of children between the ages of fourteen and fifteen may apply either generally to all such children, or to children other than those employed in specified occupations. Further, it is to be lawful for a local education authority to grant exemption from the obligation to attend school to individual children between the ages of fourteen and fifteen for such time and upon such conditions as the authority think fit in any case where after due enquiry the circumstances seem to justify such an exemption.

Apparently under these provisions a local education authority could raise the general age for leaving school to fifteen, but provide that children might leave at fourteen to start work on a farm, or to go into a cotton mill. It is not clear that there is any safeguard at all against favouritism on the part of the local education authority as between different occupations. For instance, Rugby is a considerable engineering centre in a district which is otherwise mainly agricultural, and boys from the villages in the neighbourhood are attracted to the engineering works in Rugby. There is apparently nothing to prevent the Education Committee of the Warwickshire County Council passing bye-laws under which the village boys could leave at fourteen to go into farms, but could not leave till fifteen to go into engineering, and doing this in the interest of the farmers and not of the children.

Apparently the latter part of the second sub-section is not intended to perpetuate the system of granting exemptions to children who are clever enough to pass a special examination and who are the very children most likely to benefit by further school attendance. A child apparently can be totally exempted at fourteen because his mother is a widow, or can be given leave to take employment while his father is in a sanatorium, or for other reasons individual to the child, but cannot be given exemption on general grounds.

With regard to the age specified in these sub-sections it must be borne in mind that under section 9 where any child attains any year of age during the school term, the child shall not for the purpose of any enactment or bye-law relating to school attendance be deemed to have attained that year of age until the end of the school term.

To sum up, a child cannot leave school till the end of the term in which he attains the age of fourteen years. A local education authority may pass bye-laws substituting the term in which he

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attains the age of fifteen for the term in which he attains the age of fourteen, but may make exceptions in favour of children employed in specified occupations, or in favour of individual children whose circumstances, after due enquiry, justify the exemption.

The next point to notice is that under section 14 no child who is bound to attend school under the provisions just set out may be employed.

- (a) in any factory or workshop to which the Factory and Workshop Acts, 1901 to 1911, apply ;
- (b) in any mine to which the Coal Mines Act, 1911, applies ;
- (c) in any mine or quarry to which the Metalliferous Mines Acts, 1872 and 1875, apply, unless lawfully so employed on the appointed day.

Sub-section 1 of section 13 of the Education Act, 1918, modifies very considerably the provisions of the Employment of Children Act, 1903, as to the employment of children who are still at school. As we have just seen, these children cannot now be employed in a factory, workshop or mine, but there are many miscellaneous occupations in which it is commercially feasible to employ children either before or after school hours or during their holidays.

In place of the provision that a child is not to be employed between 9 p.m. and 6 a.m., except where a local authority has passed a bye-law varying those hours, the Education Act, subject to the powers given to local authorities to make bye-laws, (a) absolutely prohibits the employment of a child under the age of twelve, (b) allows a child of the age of twelve and upwards to be employed for two hours but no more on a Sunday, and for a similar time after the close of school hours on any day on which he is required to attend school, but so that none of his employment falls within the hours between 8 p.m. and 6 a.m. The modifications in these general rules which can be made by the bye-laws of a local authority are as follows :—

- (a) a local authority may make a bye-law permitting with respect to such occupations as may be specified and subject to such conditions as may be necessary to safeguard the interests of the children, the employment of children by their parents, but so that any employment permitted by bye-law on a school day before 9 a.m. must be limited to one hour, and that if a child is so employed before 9 a.m. he is not to be employed for more than one hour in the afternoon.

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- (b) a local authority may by bye-law and subject to the conditions already set out in (a) permit the employment of children of the age of twelve or upwards before school hours.
- (c) These powers are without prejudice to the powers to make bye-laws under the Act of 1903.

The provision in the Act of 1903 as to half-timers disappears with the abolition of the half-time system.

The provision in the Act of 1903 permitting street trading by children of the age of eleven and upwards is turned into an absolute prohibition of street trading by children.

The lines on which local authorities are likely to exercise their powers by making bye-laws under the combined operation of the Employment of Children Act, 1903, and the Education Act, 1918, may be illustrated by the bye-laws adopted by the Corporation of Birmingham in June, 1920. The main points of those bye-laws are as follows :—

(1) A child under the age of twelve years is not to be employed in any occupation, including in that phrase any industrial work at home.

(2) Eight kinds of employment are definitely prohibited for children between the ages of twelve and fourteen. These include employment in barbers' shops, hotel kitchens, billiard rooms, public-houses, places of entertainment, slaughter-houses and in rag picking.

(3) In the case of children between the ages of twelve and fourteen who are employed in the sale or delivery of milk, the sale or delivery of newspapers, the delivery of parcels, in any coal yard, in industrial work at home, or in agricultural work, the employer, or, in the case of industrial work at home the parent, must keep a written record of the name, address, age, occupation and hours of employment of the child, and make a return of the same particulars to the Local Education Authority every six months.

(4) The hours of employment on school days in authorised occupations of children between the ages of twelve and fourteen are (with two exceptions for which morning employment is allowed) to be the two hours 5.30 p.m. to 7.30 p.m.

(5) In the case of the children employed to deliver milk or newspapers the hours of employment authorised on school days are 7 a.m. to 8 a.m., and one specified afternoon hour chosen by the employer from the three periods 5.30 p.m. to 6.30 p.m., 6 p.m. to 7 p.m., and 6.45 p.m. to 7.45 p.m.

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No child is to be employed in these occupations without a medical certificate of fitness from a school medical officer.

(6) On weekdays when school is not open children between the ages of twelve and fourteen may be employed in authorised occupations, either between 8 a.m. and 1 p.m. or between 2 p.m. and 7 p.m., except that children employed in milk or newspaper delivery may be employed between 7 a.m. and 9 a.m. and again between 5.30 p.m. and 7.45 p.m.

(7) On Sundays children between the age of twelve and fourteen may only be employed in the delivery of milk and newspapers, and only between the hours of 8 a.m. and 10 a.m.

(8) Purveyors of milk and newsagents must provide children who are employed by them before school hours with sufficient waterproof footwear and a sufficient waterproof garment.

Finally, to return to the Education Act itself, section 15 provides that the local education authority, if they are satisfied by a report of the school medical officer or otherwise that any child is being employed in such a manner as to be prejudicial to his health or physical development or to render him unfit to obtain the proper benefit from his education, may either prohibit or attach conditions to that employment, or his employment in other manner, notwithstanding that the employment of the child may be otherwise legal.

The second sub-section of section 13 of the Education Act, 1918, amends the Prevention of Cruelty to Children Act, 1904, by making the hours between which children under fourteen years of age may sing, play, perform, etc., 6 a.m. and 8 p.m. It further raises the age which the child must reach before being allowed to sing, play, perform, etc., from eleven years to twelve years. The licensing of children to take part in entertainments is eventually to be limited to children over twelve years of age in place of children over ten years of age, but the appointed day for this cannot be earlier than three years from the passing of the Act. Finally, licences to take part in entertainments are no longer to be granted by the magistrates, but are to be granted by the local education authority of the area in which the child resides, subject to such restrictions and conditions as may be prescribed by the Board of Education. A licence so granted may be rescinded by the authority of any area in which it takes effect if the restrictions and conditions of the licence are not observed, and may be varied or added to by that authority at the request of the holder of the licence. It will be gathered from this series of enactments that when the Education Act, 1918, is fully in

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force, the employment of a child will be entirely controlled from the educational standpoint, and that the educational needs of the child will not be sacrificed to the financial emergencies of the parents. The true method of dealing with the poverty of families in which there are children of school age cannot be discussed here, but this at least may be said, that any system which sacrifices the children's future and the welfare of the next generation for some little present gain in the shape of children's earnings is short sighted and in the long run a bad bargain for the community.

Addendum.—On the 23rd December, 1920, an Act (the Employment of Women, Young Persons and Children Act, 1920), was passed to give effect to the Washington Conventions. As regards children it does not substantially carry English Law further than the Education Act, 1918, but its phraseology is quite different. No child under the age of fourteen years is to be employed in any 'industrial undertaking.' 'Industrial undertaking,' for this purpose, includes four classes of undertakings, which may be summarised as (a) mines, etc.; (b) manufactures, etc., including shipbuilding, and the generation, transformation and transmission of electricity, and motive power of any kind; (c) works of construction; and (d) the transport of passengers or goods.

The competent authority in each country is to define the line of division which separates industry from commerce and agriculture.

The Act does not affect a child lawfully employed at the commencement of the Act (1st January, 1921). It is to be construed as an addition to existing legislation and not in derogation of it.

CHAPTER III

RECENT LEGISLATION FOR WOMEN AND YOUNG PERSONS

THE history of legislation for young persons and women as regards hours of work, etc., from 1878 onwards need not be given at any great length. The Factory and Workshop Act of 1891 prohibited women's labour during the four weeks after childbirth. From 1883 onwards there was a great extension of detailed rules for dangerous industries and these can best be dealt with in considering the present position of such industries. By the Factory and Workshop Act, 1891, this kind of legislation was definitely withdrawn from Parliament as the direct legislating body and placed in the hands of the Home Office, which was given the power of making statutory rules and orders, subject to the power of Parliament to reject them if it thought fit. This delegated legislation in many instances concerned adult men, but it was largely for the protection of children, young persons and women. As regards children, it has been superseded by the more drastic and general prohibitions of the Education Act, 1918. Its effect on adult male labour will be separately considered. It therefore seems best to pass to a statement of the present position of the law as regards young persons and women in employment. The matter is one of considerable complexity and the best method of classification is hard to discover. In spite of the fact that in general under the Factory Acts a young person passes into the adult class at the age of eighteen years, there are nevertheless some important matters in which young persons under sixteen are differentiated from those of that age or over. We shall proceed to consider those cases at once.

It must also be borne in mind that in some parts of legislation other than that for factories and workshops, the age of sixteen is an even more important line of demarcation, but these instances will be deferred until abnormal and normal cases under the Factory Acts have been stated.

(a) At the present time the provisions of the Education Act,

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1918, as to continuation schools are limited to young persons under the age of sixteen.

Under the definition clause in section 48 of the Act the expression 'young person' means a person under eighteen years of age who is no longer a child, but the first proviso to section 10 enacts that the obligation to attend continuation schools is not, within a period of seven years from the appointed day on which the provisions of that section come into force, to apply to young persons between the ages of sixteen and eighteen, nor after that period to any young person who has attained the age of sixteen before the expiration of that period.

Further, a young person who on the appointed day is above the age of fourteen is to be exempt from the obligation to attend continuation schools unless he has informed the authority in writing of his desire to attend such schools and the authority have prescribed what school he is to attend.

The obligation on young persons is to attend such continuation schools at such times and on such days as the local education authority of the area in which they reside may require for 320 hours in each year, distributed as regards times and seasons as may best suit the circumstances of each locality. By the second proviso to section 10 the local education authority is empowered during the seven years period mentioned in the first proviso set out above to substitute 280 hours a year for 320 hours. It is generally anticipated that in urban areas these obligations will take the form of attendance at continuation schools for eight hours a week or, where the hours are reduced, for seven hours a week, for forty weeks in the year.

The obligation on the employer of a young person who is bound to attend continuation school is contained in sub-section 6 of section 10 of the Education Act and is as follows:—'The local education authority may require in the case of any young person who is under an obligation to attend a continuation school that his employment shall be suspended on any day when his attendance is required, not only during the period for which he is required to attend the school, but also for such other specified part of the day, not exceeding two hours, as the authority considers necessary in order to secure that he may be in a fit mental and bodily condition to receive full benefit from attendance at the school.' An employer has power to appeal to the Board of Education if he considers that the requirements of the local education authority are unreasonable.

By sub-section 7 of section 10 attendance at continuation

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school is not to be required on days or parts of days which are either statutory or customary holidays or half-holidays from work, so that the whole of the 320 hours or 280 hours of instruction together with the prescribed amount of leisure before and after instruction will be a subtraction from working hours. In some cases employers have already set up schools in connection with their works. The relationship of these schools to the general scheme of continuation schools is given by sub-section 8 of section 10. A local education authority must not, without the consent of a young person, require him to attend any continuation school held at or in connection with the place of his employment. Such consent may be withdrawn by one month's notice in writing sent to the employer and to the local education authority. Further, any school attended by a young person at or in connection with the place of his employment must be open to inspection either by the local education authority or by the Board of Education, at the option of the person responsible for the management of the school. The object of this inspection is apparently to enable attendance at a continuation school under the management of an employer which on inspection is found to be giving suitable and efficient part time instruction, to be the basis of exemption for its pupils under sub-section 3 of section 10. That sub-section enacts that the obligation to attend continuation schools shall not apply to any young person who is shown to the satisfaction of the local education authority to be under suitable efficient part time instruction in some other manner for a number of hours in the year (being hours during which if not exempted he might be required to attend continuation schools) equal to the number of hours during which a young person is required to attend a continuation school.

Attendance at continuation schools is enforceable by a fine, (a) on the young person who fails to attend and cannot prove the excuse of sickness or some other unavoidable cause of absence, and (b) on a parent who conduces to or connives at the failure on the part of the young person to attend.

In the matter of the provisions of continuation schools the Board of Education will doubtless exercise in a very full manner its power to fix different appointed days for different areas. In the Birmingham area the Board has fixed the appointed day so as to allow of the opening of the first continuation schools in January, 1921,¹ and the first batch of children whose attend-

¹ Certain schools were opened in January, 1921, and have since been discontinued, owing to the refusal of the City Council to find the necessary money.

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ance at such schools will be compulsory will be those who have attained the age of fourteen years after 23rd August, 1920.

(b) Certificates of fitness under the Factory and Workshop Act, 1901, are only required for young persons under the age of sixteen years.

Under section 63 of that Act a young person under the age of sixteen years must not be employed for more than seven work-days, or if the certifying surgeon for the district resides more than three miles from the factory, for more than thirteen work days, unless the occupier of the factory has obtained a certificate in the prescribed form of the fitness of the young person for employment in that factory.

It will be noted that the certificate is not a general certificate of fitness for factory work which the young person can take from factory to factory, but a certificate of fitness issued to the employer, for the employment in his factory of the young person, and a fresh certificate must be obtained by every new factory employer of the young person until such young person reaches the age of sixteen.

The factory occupier must, when required, produce to an inspector at the factory in which a young person is employed the certificate of fitness of that young person.

Section 64 of the Act of 1901 lays down rules for the granting of certificates which may be summarised as follows ;—

- (1) The certificate must be granted by the certifying surgeon for the district.
- (2) The certificate must not be granted except upon personal examination of the person named therein.
- (3) As a general rule the certifying surgeon must examine the young person and sign the certificate at the factory where the young person is or is about to be employed.
- (4) The certificate must state that the certifying surgeon is satisfied by the production of a certificate of birth or other sufficient evidence that the person named in the certificate is of the age therein specified and has been personally examined by him and is not incapacitated by disease or bodily infirmity for working daily for the time allowed by law in the factory named in the certificate.
- (5) The certificate may be qualified by conditions as to the work on which the young person is fit to be employed.
- (6) A certifying surgeon shall have the same powers as an inspector for examining any process on which the young person is proposed to be employed.

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- (7) Where a certifying surgeon refuses to grant a certificate for any person examined by him, he shall, when required, give in writing and sign the reasons for his refusal.
- (8) Where the same person is the occupier of several factories in the same district one certificate may be given for all the factories.
- (9) The certificate of birth may be either a certified copy of the entry in the register of births, or a special certificate under the Elementary Education Act, 1876.
- (10) Where no certificate of birth has been produced to the certifying surgeon, the inspector may, by notice in writing, annul the surgeon's certificate if he has reasonable cause to believe that the real age has been understated.

These provisions apply in general only to young persons working in factories, but under section 65 an occupier of a workshop may obtain, if he thinks fit, from the certifying surgeon for the district, certificates of the fitness of young persons under the age of sixteen years for employment in his workshop in like manner as if that workshop were a factory.

Under section 66, where it appears to the Home Secretary that by reason of special circumstances affecting any class of workshops it is expedient for protecting the health of the young persons under the age of sixteen years employed therein to extend to that class of workshops the prohibition of employment without a certificate of fitness of such young persons he may by Order proceed to do so.

Since January 1st, 1907, nine classes of workshops have been put on the same footing as factories with regard to certificates of fitness. They are as follows:—(1) file-cutting, (2) carriage building, (3) rope and twine making, (4) brick and tile making, (5) making of iron and steel cables, chains, anchors, grapnels, and cart gear, (6) making of nails, screws and rivets, (7) baking bread, biscuits or confectionery, (8) fruit preserving, and (9) making, altering, ornamenting, finishing or repairing of wearing apparel by the aid of treadle sewing machines.

Finally, under section 67 a factory inspector has power to order the re-examination of a young person if he is of opinion that the young person is by disease or bodily infirmity incapacitated for working daily for the time allowed by law in the factory or workshop in which he is employed.

The general question arises how far the system of certification really attains its purpose. There is no doubt that in the past

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a good deal of examination has been perfunctorily performed. For the year 1913 there were 2,364 certifying surgeons, who undertook nearly 400,000 examinations of young persons, which gives an average of under 200 inspections for each surgeon, but the work is not distributed evenly. Thus, the certifying surgeon for Hammersmith reports the examination of over 7,000 young persons. In Birmingham about 5,000 children leave school at the end of each term, which makes 15,000 for each year. Not all these children go into factory occupations, but a good many of them are examined more than once, and the total number of examinations of children per annum in Birmingham by the certifying surgeons is about 16,000. It is reckoned that a school medical officer giving his whole time to his work and having the children grouped in schools could do efficiently a maximum of 8,000 examinations per annum. At this rate Birmingham should need two whole time certifying surgeons for this part of their work alone. It is understood that though there are four certifying surgeons in Birmingham three of them only give a small part of their time to this work.

An interesting point is that the certifying surgeon for Hammersmith with his examination of 7,000 young persons, only rejected ten cases.

On the other hand the certifying surgeon for St. Pancras rejected 2·2 per cent. of the candidates for certificates, and the average for the whole country is just under 2·7 per cent.¹ What is obviously wanted is that the information collected during the school life of the young person should be available for the certifying surgeon. Where the offices of school medical officer and certifying surgeon are held by the same person the two systems are intimately linked together. The Annual Report for 1913 of the Chief Inspector of Factories gives one or two instances of this, and one doctor who serves in this dual capacity reports: 'I have been able to use the dual office to the advantage of both factory certification and medical inspection. Every physically defective child leaving school in my area is known to me. On my visit for certification to any mill I carry a list of defective 'leavers' with me and a reference to such list gives valuable information.'

Another doctor reports: 'All the 821 young persons examined were known to me as school medical officer, and have been examined

¹ In 1919, the number of examinations of young persons was 344,920, a decrease of nearly 13 per cent. on 1913. The number of rejections was 10,742, or 3·1 per cent.

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four times during their school life. Those who were rejected and those who received conditional certificates have been examined on an average three times a year during their school life.' In many districts it may be impossible to unite these two offices, but it should be feasible to arrange generally that the child's bill of health as ascertained at school should be produced for the inspection of the certifying surgeon, together with the birth certificate. Legislation would be necessary to make this compulsory, but wherever an education authority sets up an After-Care (Employment) Committee much might be done at once. An efficient after-care committee gets into touch with all the children leaving school at the end of a particular term, and advises them on the choice of their occupations, and keeps in touch with them for a period after leaving school. The education authority can see that their school medical officer notifies the after-care committee of all cases of children whose physical condition makes special attention to their choice of occupation necessary. If the child on leaving school starts work in a factory which is anyway likely to be unsuitable from a physical point of view, the after-care visitor can acquaint the certifying surgeon with the particulars of the young person's health so far as disclosed by the school records. The report of a lady inspector for a Lancashire town in the 1913 Report stated that when a child known to have a physical defect or to be of a weakly constitution goes to work the certifying surgeon is duly notified and he subjects the child to a searching examination, but the actual machinery of notification is not stated.

Another method of co-ordination would be for the education authority to notify the juvenile branch of the Labour Exchange when children whose health requires special care are about to leave school, and when such children are placed in factories for the juvenile branch to call the attention of the certifying surgeon to its information. In the 1913 Factory Report an instance is given of a certifying surgeon who reported regularly to the juvenile branch of the Labour Exchange the cases he rejected and other cases which though not rejected could with advantage receive special medical or surgical advice and treatment or special home care.

At the present time the matter is full of practical difficulties, and the situation will become increasingly anomalous as soon as continuation schools are in full operation. School medical inspection has been extended to these schools, and the young persons in them will, so far as they are engaged in work for which

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a certifying surgeon's certificate is necessary, actually have a dual medical inspection.

In Birmingham this matter has received a good deal of attention, and the following paragraph from the Report for 1919 of the School Medical Officer bears upon the questions which have been discussed :—

' The medical department works in close co-operation with the after-care committee. This co-operation consists in the first place of entries made on the after-care visitor's card by the assistant school medical officer of facts which have a bearing on the health and physical condition of the children about to leave school. Special cases are frequently referred to the school medical officer for examination and advice, and other special cases, sent by the medical department to the after-care committee, are visited, and careful attention is given to the medical recommendation when the choice of employment is under consideration. With the extension of inspection and treatment to the continuation schools and the abolition of half-time employment, the medical supervision of the adolescent population will be linked up with that of the elementary school. This will render the examination of the certifying factory surgeon to a large extent redundant. The terms of reference to the certifying surgeon are "to examine persons under sixteen as to their fitness for employment in factories, and certain classes of workshops and to give certificates accordingly." Without previous knowledge of the medical history, and detailed examination under suitable conditions, it is difficult, if not impossible, to give an opinion of real value. This knowledge can be supplied by the records of the periodic inspections and medical history sheet of each individual. It is, however, difficult to devise a scheme whereby this knowledge can be placed at the service of the certifying factory surgeon. At present a special card (E.D. 259) is provided for his use whereby he can report defects found by him. Comparatively little use is made of this card, and only some fifty per annum are sent to the after-care department. Those which are returned are forwarded to the after-care helpers who do their best to see that instructions are carried out.'

It will have been noted that the examination normally takes place at the factory itself, and though this is an enormous advantage in enabling the surgeon to see for himself the factory conditions, yet it is not suprising that the surgeons sometimes complain of a lack of facilities for the detection of certain classes of defects. As, however, welfare orders making the provision of rest rooms

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and first aid rooms compulsory are now being widely adopted, there must now be in a large number of cases a place for examination much more suitable than 'a general office in which privacy is unobtainable.'

(c) There are a large number of instances in which special treatment under the Factory and Workshop Act, 1901, is accorded to male young persons over the age of sixteen years as regards 'the period of employment.'

In the case of a male young person over sixteen years of age employed in the part of a textile factory in which a machine for the manufacture of lace is moved by mechanical power, the period of employment, instead of being the normal twelve hours period, is the period of eighteen hours between 4 a.m. and 10 p.m., but the actual working hours must not exceed nine hours out of the eighteen and he must not be employed on the same day both before and after the limits of the ordinary twelve hour period of employment.

On the same lines a male young person over sixteen years of age employed in the part of a bakehouse in which the process of baking bread is carried on may be employed between 5 a.m. and 9 p.m., but the actual working hours must not exceed nine hours out of the sixteen, and he must not be employed on the same day both before and after the limits of the ordinary twelve hour period of employment.

In eight cases night work was allowed by the Factory Act, 1901, but these provisions have been modified by the Employment of Women, Young Persons and Children Act, 1920. The present position¹ appears to be as follows :—

In the case of a male young person over the age of sixteen years employed in blast furnaces, iron mills and paper mills, night work is allowed subject to the following conditions. The period of employment is limited to a specified twelve hour period, meal times must be allowed as in the day time period, there must be no work in the twelve hours before or after a night shift ; unless the youth is employed on the three-shift system he must not be employed on more than six nights or in blast furnace or paper mills on more than seven nights in any two weeks ; if employed on the three-shift system of eight hours each he may be employed on any shift so long as there is an interval of two unemployed shifts between the shifts of employment ; he must not be employed

¹ As regards iron mills and blast furnaces, the modifications did not come into force till 1st July, 1922.

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during the night in any process other than a process incidental to the business of the factory.

Male young persons of the age of sixteen and upwards who are employed as assistants to adults who are actually present with them during the whole time of their employment may no longer be employed on night work in electrical stations.

--- Male young persons of the age of sixteen and upwards may be employed on night work in that part of any factory in which reverberatory or regenerative furnaces are used and are necessarily kept in operation day and night in order to avoid waste of material and fuel, on the same general conditions as are laid down in the case of blast furnaces, etc., together with special conditions which provide that the occupier must hold a certificate from the factory inspector, defining the processes for which this exceptional employment is allowed and certifying that provision has been made to the inspector's satisfaction for compliance with the conditions laid down, and which also provide that every young person so employed must be submitted by the occupier to the certifying surgeon once at least in every six months, that a register must be kept of such examinations, and that no young person who on examination is certified by entry in the register signed by the surgeon to be unfit for such employment is to be employed again without the written sanction of the surgeon entered on the register. Male young persons of the age of sixteen and upwards may be employed on night work in the process of galvanising sheet metal and wire on substantially the same conditions as are laid down for night work of similar young persons engaged in work on reverberatory or regenerative furnaces.

Another special exception to be noted under this heading is one which allows a male young person of sixteen years of age and upwards employed in glass works to work the accustomed hours of the works, so long as the following conditions are observed. The periods of employment must not exceed sixty hours in any one week, *the periods of employment* may be four turns of fourteen hours each, six turns of ten hours each, or fewer hours and more turns, so that the turns per week do not exceed nine. The intervals between two turns must not be less than the turn itself; after five hours work there must be an interval for meals of at least half-an-hour; the youth must not be employed on Sunday.

(d) There are two instances of the prohibition, under the Factory and Workshop Act, 1901, of the labour of female young persons under the age of sixteen years.

A girl under the age of sixteen years must not be employed in a

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factory or workshop in which there is carried on (a) the making or finishing of bricks or tiles, not being ornamental tiles, or (b) the making or finishing of salt.

(e) There are certain prohibitions of the labour of young persons under sixteen years of age under the Factory and Workshop Act, 1901, without distinction of sex. By virtue of Special Orders made under section 79 of the Act of 1901 there is an absolute prohibition of the employment of persons under sixteen years of age (1) in the process of heading of yarn dyed by means of a lead compound, (2) in any enamelling process in the vitreous enamelling of metal or glass, (3) in tinning metal hollow ware, iron drums and harness furniture, (4) in any lead process, in the smelting of materials containing lead, the manufacture of red or orange lead, and the manufacture of flaked litharge, (5) in private railway sidings, forming part of factories and workshops, as a shunter.

(f) There is a prohibition of the labour of male young persons under sixteen years of age under the Factory and Workshop Act, 1901, as follows :—

In docks, wharfs, quays, harbours, and canals a boy under sixteen must not be employed as driver of a crane or winch, or to give signals to a driver, or to attend to cargo falls on winch ends or winch bodies.

(g) The prohibitions under the Special Order dealing with the manufacture or decoration of pottery are deserving of special attention, as showing the minute attention which is now given to the question of age in Home Office Orders, and the combination of age regulations with regulations for periodic medical examinations. It would be tedious to deal with all of them (see *Industrial Law*, pp. 487, 488), but one set will be taken as an example.

Permission to carry clay.—No young person is to be employed in carrying clay or other systematic carrying or lifting work without a certificate of permission to work, specifying the maximum weight which he or she may carry, and no young person so employed is to be allowed to lift or carry any weight in excess of that named in the certificate. Further, (1) no certificate may permit the carrying of more than 30 lbs. by any one under sixteen years of age ; (2) No girl under sixteen years of age and no boy under fifteen years of age may carry clay unless he or she is working by himself or herself and is not an attendant of another worker, in which case he or she may carry such clay as is to be used by him or her in making articles of pottery.

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All persons for whom certificates of permission to work are required must be examined by the surgeon within seven days of the commencement of their employment in a process in which such a certificate is required. All young persons employed in the carrying of clay or other systematic carrying or lifting work must be re-examined by the surgeon twice in the first period of six months and once in each period of six months thereafter, until they attain the age of eighteen.

We may now pass to the consideration of the general rules as to the hours of employment of women and young persons under the Factory and Workshop Act, 1901.

These hours of employment of women and young persons are in the main the same, and it is simplest to consider them together.

First the Act prescribes a daily period of employment, and outside the limits of that period employment in the factory or workshop is illegal. The restriction of the period of employment to hours in the daytime makes night work,¹ without any express mention of it, illegal. There are four classes of workplaces to consider—viz., (A) textile factories² (B) print works, etc. (C) non-textile factories and workshops, and (D) women's workshops.

Except in the case of women's workshops, the period of employment for the first five days of the week (excluding Sunday) is a definite twelve hour period chosen by the employer from certain alternatives allowed by the Act. The occupiers of the first two classes of workplaces (A) and (B) are limited to the choice of 6 a.m. to 6 p.m., or 7 a.m. to 7 p.m.

The occupiers of the third class (C) have those two choices and also the choice of 8 a.m. to 8 p.m. In the case of women's workshops the occupier can fix any specified twelve hour period he likes between 6 a.m. and 10 p.m.

On Saturdays in classes (A) and (B) there must not be more than five hours work and work must cease not later than 1 p.m. In class (C) there may be an eight hour period finishing at 2 p.m., 3 p.m. or 4 p.m., according to the hour of starting. While in class (D) the employer may select as his eight hour period any specified period of eight hours between 6 a.m. and 4 p.m.

The legal working hours, as distinct from the period of employ-

¹ For the provisions as to night-work continued in the Employment of Women, Young Persons and Children Act, 1920, see the Addendum to this Chapter.

² For the definition of textile factories see p. 83 *supra*. The definitions of the Factory Act, which are highly technical, will be found in full in *Industrial Law*, Ch. IX.

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ment, can only be arrived at when the compulsory stoppages for meal times have been ascertained and allowed for. In classes (A) and (B) two hours a day must be allowed for meals on the first five days in the week and half-an-hour on Saturdays. This gives a maximum ten hour day for the first five days of the week and with the five hour day already fixed for a Saturday makes a weekly total of fifty-five hours. There is a further provision that the hours of work and the mealtimes must be reasonably arranged, and this is accomplished by stating a maximum period of continuous employment without a break of at least half-an-hour for a meal. In class (A) this is four and a half hours. Thus the occupier, if he wants to utilise the whole twelve hour period, must either have two breaks of an hour each or three breaks, two of half-an-hour and one of one hour. But as is well known, working hours have by arrangement been reduced considerably below fifty-five. In class (B) the maximum period of continuous employment is five hours, and an employer could work two periods of five hours each with a two hour break for meals in the middle.

In class (C) the compulsory stoppages for meals is only one and a half hours on the first five days of the week, making ten and a half hours net per day, the legal maximum on those days. On Saturday there need only be half-an-hour stoppage for a meal, which, subtracted from eight hours, gives a working Saturday of seven and a half hours. Thus the maximum weekly hours work out at sixty. In this class, as in class (B), the maximum period of continuous employment is five hours.

In class (D) the meal times are the same as in class (C), but there is no maximum period of continuous employment. Thus, suppose the occupier of a woman's workshop is engaged on some handicraft (it cannot by hypothesis be work done by machines driven by mechanical power), the material for which is collected daily from outside sources (e.g. the sewing or machining by hand-driven machines of garments cut elsewhere) and that the work so collected only begins to arrive as the day proceeds. It would be possible for him to work his women from 10 a.m. till 1 p.m. and then have a dinner hour of one and a half hours followed by a working period from 2.30 p.m. to 10 p.m. without any interval at all, or with a bare fifteen minutes for tea. This is the kind of liberty which was secured for adult women by the protagonists of individual independence in the seventies of last century.

It should be noticed that these hours apply to all the female labour in the factory, including cleaners. The writer once came across a curious and unintended infringement of the Act under

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the following circumstances. The factory was actually working a forty-four hour week, with an 8 a.m. to 6 p.m. period of employment. The ordinary workers on the first five days of the week finished about 5 p.m. Little or no cleaning was done on Saturday and extra cleaning was done on Friday evenings to make up for this. The firm kept their cleaners at work on Fridays till 9 p.m., but this was clearly illegal. It has been held that cleaning means not only such cleaning as is essential to the work of the factory but also sweeping and tidying up.

As regards class (C), the Home Office can by Special Order permit the period of employment to be from 9 a.m. to 9 p.m. when the customs and exigencies of the trade require it and the permission can be granted without injury to the health of the women and young persons affected by it. Only two industries have been dealt with under this power and the operation of the Order was limited to the Metropolitan area.

As has already been said, night work is excluded by the prohibition of employment of women and young persons except during the periods of employment allowed by the Act. Sunday work, either by day or night, is expressly prohibited. Further, certain holidays are compulsory in the case of women and young persons—namely, Christmas Day, Good Friday and every Bank Holiday, unless in lieu of any of those days another whole holiday (or two half holidays) is allowed. The occupier can choose the substituted days, but must notify the inspector of his choice, and must put up a notice of his choice in his factory or workshop during the first week in January. It is quite usual to substitute Easter Tuesday for Good Friday and by custom works are usually closed for holidays for periods in excess of these minimum legal requirements.

There is an important provision of the Act relating to the employment of women and young persons both inside and outside a factory or workshop on the same day, *in the business of the factory or workshop*. If the woman or young person is employed in the factory or workshop both before and after the dinner hour, then any employment of such person on that day on the business of the factory or workshop outside the factory or workshop must fall within the period of employment. Thus, suppose lace finishers are employed in a lace warehouse the period of employment for which is 8 a.m. to 8 p.m. and that the trade is busy and the workers are working the full legal hours till 8 p.m.; then in this case, though lace finishing is work which is very commonly done at home, no worker in the warehouse could lawfully be given work to do at home. The plea could not be set up that the work

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was intended to be done on some other day, as the Act expressly enacts that a woman or young person to or for whom any work is given out, or who is allowed to take out any work to be done by him or her outside a factory or workshop, shall be deemed to be employed outside the factory or workshop *on the day on which the work is so given or taken out*. At the present time there is a real danger of infringements of the Act in the case of these lace finishers, but the position is not so simple as in the illustration just given. The actual working done under modern conditions would not cover the whole of the period of employment. If, for instance, it began at 8 a.m. it would probably finish at 5.30 p.m., and there would still be the period up to 8 p.m. during which the woman or young person could lawfully work at home. The work could therefore legally be given or taken out at 5.30 p.m., and the offence would only be committed if it could be proved that the woman or young person was actually at work after 8 p.m. If the worker was conniving at the infringement it would be much more difficult to prove work after 8 p.m. than the mere fact that the work was given or taken out by the worker.

The Act also makes special provision for the case of a factory or workshop occupier who also has a shop in the ordinary sense of that term.

In this case employment in the shop is legal even outside the period of employment if two conditions are fulfilled. First, the total number of hours of employment in the factory or workshop and in the shop must not exceed the number of hours permitted for that day in the factory or workshop. Thus, if the worker was kept working in the shop for one hour outside the period of employment, this must be compensated for by an extra hour's leisure during the period of employment. Secondly, any employment in the shop outside the period of employment must be entered in the general register which the occupier of the factory or workshop is required to keep.

We must next notice certain provisions which make the administration of the regulations as to hours and mealtimes much easier, though they in no way shorten the legal periods of employment.

The occupier may fix, within the limits already stated, the period of employment for his factory or workshop and the times allowed for meals, but when he has made his choice he must put up a notice in his factory or workshop stating what he has chosen, and he must not make a fresh choice until he has served on the inspector, and affixed in his factory or workshop, notice of his intention to make a change, and he must not make a change

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more than once a quarter, unless for some special cause allowed in writing by the inspector.

To prevent disputes about clocks and possible alterations of clocks, an inspector may, by notice in writing, name a public clock by which the period of employment and the times for meals in any particular factory or workshop are to be regulated.

Finally, as a general rule (a) the meal times for women and young persons are to be simultaneous, and (b) during meal times they are not to be allowed to remain in a room in which a manufacturing process or handicraft is then being carried on. The administrative convenience of this rule is obvious. If meal times were not simultaneous then the work rooms could not be closed and a woman or young person found working during one mealtime could be claimed by the employer as belonging to the set which had another meal time. The taking of meals in a workroom may also be undesirable from a health point of view, as will be seen from the special cases given below in which relief is given from rule (a) but not from rule (b).

Certain exceptions are allowed for the most part from both sections (a) and (b) of the general rule, but in three cases from section (a) only, and some of these take effect under the express terms of section forty of the Act of 1901, while others are in operation by reason of Special Orders made by the Home Secretary under powers given him by that section. The reason for these exceptions can be gathered from the terms used in giving these powers to the Home Secretary. Before he can make a Special Order of this class he must be satisfied that 'it is necessary by reason of the continuous nature of the process or of special circumstances' to extend to a fresh class of factories or workshops exceptions from either section (a) or section (b) or from both sections of the general rule, and that the extension can be made without injury to the health of the women and young persons affected thereby. The industries, workplaces and classes of persons which for this purpose are treated as exceptional are as follows.

- (a) Iron mills, paper mills, glass works, letterpress printing works, dyeing or open air bleaching. In these workplaces male young persons have a separate meal time.
- (b) Certain special departments of textile factories which can be treated as separate factories.
- (c) Non-textile factories and workshops in which departments or sets of young persons can be treated separately.

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- (d) Workplaces for the making of wearing apparel.
- (e) Certain mines, quarries, etc., in Cornwall.
- (f) The making of bread or biscuits by means of travelling ovens.
- (g) The spinning of artificial silk. In this industry the spinners are separated from the other operatives.
- (h) The making up of flax, jute, or hemp. In this industry the sweepers are separated from the other operatives.
- (i) Young persons above the age of sixteen employed in electrical stations.
- (j) Male young persons employed in iron and steel foundries and
- (k) Women and young persons employed in florists' workshops.

There are also three cases in which simultaneous mealtimes are not required, but exclusion from the work room during mealtimes is insisted on. These cases are (1) blast furnaces, (2) parts of glass works where materials are mined or flint glass is ground, cut or polished, and (3) factories and workshops in which the printing of photographs is carried on.

So far we have dealt with normal hours of work. The Factory and Workshop Act makes certain provisions for overtime. Overtime in its legal sense must be distinguished from overtime which is merely distinguished from ordinary time by the fact that it is paid for at a rate higher than the ordinary rate. So far, in factories and workshops in general no limit of hours has been laid down for adult men, but men have long since established in many industries the right to have extra payment for working hours in excess of the customary weekly hours, and hours worked beyond the customary week are colloquially called overtime, and the Trade Boards Act, 1918, has now adopted the phrase for time worked in excess of the hours which a Trade Board declares to be normal in the trade.

Thus in the wholesale tailoring overtime for the purpose of the payment of the overtime rate fixed by the Trade Board begins for both men and women after nine hours have been worked in any one day or after forty-eight hours have been worked in any one week, but overtime for the purpose of the Factory and Workshop Act, 1901, is in the case of women only work done outside the daily period of employment laid down by the Act, which, as we have seen, allows ten and a half hours of employment within a specified twelve hour period. Thus if an occupier of a tailoring factory wants during a press of work to employ his women for twelve hours a day he must pay them overtime rates

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after the first nine hours, but no question of legality arises till he has exceeded the ten and a half hours allowed during the specified period of employment, but the final one and a half hours will be legal or illegal according as it does or does not comply with the rules laid down by the Factory and Workshop Act.

The general rules as to overtime under the Factory and Workshop Act may be put quite shortly. *Overtime is not allowed for young persons.* There is an apparent exception in the provision made for finishing incomplete processes, but, as will be seen later on, the exception only amounts to a re-arrangement of hours.

Overtime is not allowed for women in the parts of textile factories and workshops in which any manufacturing processes or handicrafts are carried on. Overtime is allowed for women in certain non-textile factories and workshops and in warehouses but not in women's workshops.

Overtime is only allowed for certain reasons, within certain limits and on certain conditions.

We can now turn our attention to details. Certain general provisions are contained in section 49 of the Factory and Workshop Act, 1901, while three exceptional cases are dealt with in sections 50, 51 and 52. The general provisions are as follows :—

The permission to work overtime takes the form of allowing the period of employment of any day except Saturday to be extended by two hours, making it a fourteen hour period, with a condition that the time allowed for meals is increased from one and a half hours to two hours, of which half-an-hour must be after 5 p.m. The maximum daily work is thus increased from ten and a half hours to twelve hours. No individual woman must be so employed for more than three days in any one week. The factory or workshop must not be worked on overtime for more than thirty days in any twelve months, and for this computation every day on which any woman has been employed overtime is taken into account. Suppose, therefore, an employer has a rush of work extending over six weeks, he can keep his factory on overtime for five days in each of the six weeks, but no individual woman can work more than eighteen of the thirty days on which overtime is worked. If the employer can spread his overtime over ten weeks, with three days overtime in each week, then every woman can be worked overtime for the full thirty days.

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The reasons for allowing overtime are as follows :—

- (a) That the material which is the subject of the manufacturing process or handicraft is liable to be spoiled by the weather. Five industries come under this heading, and as examples, brickmaking, open-air rope works and open-air bleaching may be mentioned.
- (b) That press of work arises at certain recurring seasons of the year.
- (c) That the business is liable to a sudden press of orders arising from unforeseen events.

Reasons (b) and (c) are closely connected. In the Act itself thirteen industries were scheduled for overtime for reason (b) and six industries were scheduled for reason (c), while by a Special Order made by the Home Secretary, fifteen other industries were included in the overtime provisions for one or other of those reasons. The following are illustrations of the seasonal industries : almanac making, valentine making, the making of Christmas and New Year cards and of cosagues, the making of mincemeat and of Christmas puddings, the making of fireworks.

The sudden order industries include such important industries as the making up of any article of wearing apparel, and of articles of table linen, bed linen, or other household linen.

Under one or other heading come letterpress printing works, bookbinding works, lithographic printing, machine ruling, envelope making, stamping in relief on paper and envelopes and the like.

The Act itself includes in the overtime list warehouses both textile and non-textile in which persons are solely employed in polishing, cleaning, wrapping, or packing up.

The general conditions are (a) that there shall be in each room in which overtime is being worked, at least 400 cubic feet of space for each person employed therein, and (b) that the factory or workshop occupier must give notice beforehand to the inspector and his workpeople of the extended hours and altered meal times and enter certain particulars in his register and make certain reports to the inspector.

The exceptional cases dealt with in section 50 are three forms of work on perishables—namely, jam making, fish curing, and the making of condensed milk. This section runs on similar lines to section 49, but only the two periods of employment, 6 a.m. to 6 p.m. and 7 a.m. to 7 p.m., admit of the extension of two hours, and fifty days in any twelve months is substituted for thirty days.

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It will be convenient here to consider what we may call emergency provisions in certain industries. For instance, in regard to fish curing, the rules laid down in the Factory and Workshop Act, 1901, as to periods of employment, time for meals, and holidays are not to apply to women and young persons engaged in processes which must be carried out immediately on the arrival of the fishing boats in order to prevent the fish from being destroyed or spoiled.

In the same way in the case of fruit preserving and jam making, during the months of June, July, August and September these rules can be set aside, but only on such conditions as the Home Office may prescribe. The conditions as settled in 1907 are first directed to maintaining special sanitary conditions, as to which there are seven separate stipulations. The Order then proceeds to prohibit the employment of women and young persons under the exception unless and until the occupier holds a certificate from the inspector of the district to the effect that provision has been made to his satisfaction for compliance with these sanitary requirements, for the maintenance of a reasonable temperature, and for ventilation. No young person may be employed to lift, carry or move any weight so heavy as to be likely to cause injury to such young person.

No woman or young person is to be employed before 6 a.m. or after 10 p.m., and in the case of young persons a period of not less than ten hours must elapse between the termination of work on one day and the commencement of work on the following day. Thus if the women and young persons are on one day kept at work till 10 p.m., then, though the women may begin work the next day at 6 a.m., the young persons must not begin before 8 a.m. The maximum period of continuous employment without at least half-an-hour for meals is kept at five hours, and there must be an hour's interval or two half-hour intervals before 3 p.m.

Any woman or young person who between the first of October and the first of July has been employed by the same occupier outside the ordinary period of employment under any other special exception is debarred from employment under this Order. Thus if the occupier had two departments, one for fruit preserving and the other a creamery (to be dealt with hereafter) he might employ some of his women and young persons outside the normal period of employment in October and also in May. He could not then transfer them for June, July, August, and September to the fruit preserving and employ them for the exceptional hours allowed by the fruit preserving order. The occupier must

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also make certain declarations and make certain entries in his factory register and send certain reports to the inspector.

Exceptions are also allowed to the general rules in the case of creameries in which women and young persons are employed. Here again the Home Office is given power to prescribe the conditions by Special Order, and besides varying the periods of employment and the meal-times, not more than three hours employment may be allowed on Sundays and Holidays. The existing Special Order, which came into force in 1903, only allows this exceptional employment during the months of May to October. During these months the period of employment is extended during the first five days of the week from 6 a.m. to 9 p.m., and the three hours on Sunday may be any three consecutive hours between 6 a.m. and 7 p.m. The chief innovation is to split the period of employment, 6 a.m. to 9 p.m., into two portions, the first from 6 a.m. to noon, and the second from 4 p.m. to 9 p.m. There must be a further interval of an hour, which presumably would be given either as a half-hour interval in these shifts or as an hour interval in the longer shift of six hours in the earlier part of the day. It will be seen that in return for late working and the Sunday work the occupier is limited to ten actual working hours instead of the ten and a half hours which are permissible under the general rules. On Saturdays there must be an interval of an hour, instead of half-an-hour in the normal period. In this way the three hours which may be worked on Sundays do not involve more than sixty hours in the week. The occupier during the summer six months may, as an alternative, keep to the normal periods of employment during the week, and employ his workers for three consecutive hours on Sunday, provided he increases the intervals between work by half-an-hour per day.

In either case no overtime is to be worked in the creamery in pursuance of any other exception.

Section 51 deals with overtime on incomplete processes. It allows in five specified industries in the case of women and young persons who are working on a process which is in an incomplete state at the end of the period of employment the continuance of working for a further period not exceeding half-an-hour on any day except Saturday, but any extension so made of the periods of employment must be compensated for by diminutions of other periods of employment in the same week, so that the total number of hours of the periods of employment for the week are not increased beyond the normal.

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This re-arrangement of hours is allowed in bleaching and dye-works, print works, and in iron mills, foundries and paper mills in which male young persons are not employed during any part of the night. This section only gives a reasonable elasticity to working hours in certain industries where the processes if left incomplete are wholly or largely spoilt.

Section 52 contains special provisions, enabling factories driven by water to work overtime within certain limits for the purpose of making up time lost by drought or floods.

Section 53 contains special provisions enabling overtime to be worked under certain circumstances to prevent damage in the processes of turkey-red dyeing and open-air bleaching.

Female labour in general is also protected by certain absolute prohibitions. Postponing for the moment the earliest example from the mining industry, we come to dangerous and unhealthy industries as defined by the Factory and Workshop Act, 1901. Under a Special Order no female is allowed to work in any process whatever in a brass casting shop. Under the Special Order for the pottery industry no female is allowed to carry a sagger full of ware. Under other provisions of the same Order women are prohibited from working on certain processes unless they have a certificate of permission to work. These are the only instances in which female labour is put in a class by itself. There are many prohibitions applying both to female labour in general and male labour up to a certain age. Thus section 76 of the Factory and Workshop Act, 1901, contains a conditional prohibition of the labour of women and young persons in any part of a factory in which wet spinning is carried on. The condition for their employment is that sufficient means are employed and continued for protecting the workers from being wetted, and, where hot water is used, for preventing the escape of steam into the room occupied by the workers. Under special Orders women and young persons have been prohibited from employment (a) in the manipulation of dry compounds of lead, (b) or in pasting in the manufacture of electric accumulators, and (c) in manipulating lead colour in the manufacture of paints and colours.

No female and no male person under sixteen years of age can be employed in the manufacture of red and orange lead and kindred processes.¹

No woman and no young person can be employed on any of eight specified processes in pottery making in which there is a

¹ See the Addendum at the end of the chapter for the provisions of the Women and Young Persons (Employment in Lead Processes) Act, 1920.

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danger of lead poisoning, or, with trifling exceptions, as a glost placer.

Another interesting feature of the Special Order for the pottery industry is that it has special regulations limiting the hours of labour on certain processes. Here we are only concerned with the maximum hours permitted for women and young persons, though, as we shall see later on, the hours of male adult labour are also regulated. In no less than fifteen lead processes a woman or young person employed in any capacity must not work for more than forty-eight hours in any week. In potters' shops and in any place where towing or any other dusty process is carried on, including any process for which a certificate has been given by an inspector under the regulations, no woman or young person is to be employed for more than nine and a half hours in any day, or for more than six and a half hours on Saturday.

Under a Special Order applying to the manufacture of chromate and bichromate of potassium or sodium no woman or young person may be employed in any chrome process.

Before we proceed to consider the employment of women and young persons in mines and shops there is the special case of laundries to be considered.

Under the Factory and Workshop Act, 1901, a laundry was considered as a workplace not quite on the footing either of a factory or a workshop, and section 103 applied certain sections of the Act to laundries carried on by way of trade and for purposes of gain, and made certain minor variations in the sections so applied. The Factory and Workshop Act, 1907, repealed section 103 of the Act of 1901 and introduced a somewhat wider definition of a laundry.¹ The provisions of the Act of 1901 as to hours of employment were to apply to laundries, but subject to the following special provisions as to the employment of women.

In laundries other than laundries ancillary to a business carried on in any premises which, apart from the provision of the Act of 1907, are a factory or workshop.

- (a) The period of employment of women may on any three days in the week, other than Saturday, begin at 6 a.m. and end at 7 p.m., or begin at 7 a.m. and end at 8 p.m., or begin at 8 a.m. and end at 9 p.m., provided that a corresponding reduction is made in the periods of employment on other days of the week, so that the total number of hours of the periods of employment of women, including

¹ See *Industrial Law*, p. 357.

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the intervals allowed for meals, does not exceed sixty-eight in any one week.

- (b) Where the occupier of a laundry so elects, the following provisions shall apply to the laundry in lieu of the provisions of the last preceding paragraph. The period of employment of women may on not more than four days, other than Saturday, in any one week and on not more than sixty days in any calendar year, begin at 6 a.m. and end at 7 p.m., or begin at 7 a.m. and end at 8 p.m., or begin at 8 a.m. and end at 9 p.m.
- (c) Different periods of employment may be fixed for different days of the week.

The occupier of a factory may not change from the system under paragraph (a) to the system under paragraph (b) or *vice versa* oftener than once a year. In reckoning the sixty days for the purposes of paragraph (b), every day on which any woman has been employed overtime must be taken into account.

We have already seen that it is illegal for any girl or woman to be employed in or allowed to be for the purpose of employment in any coal mine below ground. This rule is now to be found in section 91 of the Coal Mines Act, 1911. Section 3 of the Metalliferous Mines Act, 1872, contains a similar prohibition of female labour below ground in any metalliferous mine. In work above ground in connection with coal mines, women and boys and girls up to the age of sixteen years have rules in common.

Under section 92 of the Coal Mines Act, 1911, women and boys and girls under sixteen are not to be employed above ground for more than fifty-four hours in any one week or more than ten hours in any one day. Night work between 9 p.m. and 5 a.m. is prohibited, and so also is Sunday work and work on Saturday afternoons after 2 p.m. The maximum period of continuous employment without an interval of at least half-an-hour for a meal is five hours, and if the employment exceeds eight hours in any one day, the interval or intervals for meals must amount to at least one and a half hours. There is an absolute prohibition of employment in moving railway wagons, or in lifting, carrying, or moving anything so heavy as to be likely to cause injury to the woman, boy or girl employed.

There is no provision in the Metalliferous Mines Act, 1872, as to the hours of employment above ground of women and young persons, and such employment comes under the rules already given for non-textile factories and workshops, as 'pit banks'

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are included in the scheduled list of such factories and workshops, and are defined as 'any place above ground adjacent to a shaft of a mine, in which place the employment of women is not regulated by the Coal Mines Regulation Act, 1887, or the Metalliferous Mines Regulation Act, 1872, whether such place does or does not form part of the mine within the meaning of those Acts.'

In the case of shop assistants the classification adopted is different from that of the Factory and Workshop Acts, in so far as men and women over the age of eighteen are dealt with on exactly the same lines, and young persons under eighteen are similarly grouped together. This is the one industry in which the sex criterion is practically negligible. The one distinction based on sex in the Shops Act, 1912, relates to the provision of seats for female assistants. The occupier of the shop must provide seats behind the counter, or in such other position as may be suitable for the purpose, and such seats must be in proportion of not less than one seat to every three female shop assistants employed in each room.

The provisions as to hours for young persons in shops will be given side by side with other special provisions for young persons, while the time provisions for shop assistants generally will be dealt with after other provisions for male adult labour have been considered.

There are a certain number of rules or variations of rules which apply only to young persons. Some of these are so intimately connected with enactments which in other respects apply to both women and young persons that they have already been mentioned; see for instance the Special Orders dealing with fruit preserving (given on p. 144) with the pottery industries (given on p. 135), and section 76 of the Factory and Workshop Act, 1901, dealing with wet spinning (given on p. 146).

The following are further instances. Under section 77 of the Factory and Workshop Act, 1901, young persons must not be employed in the part of a factory or workshop in which there is carried on the process (a) of silvering mirrors by the mercurial process or (b) of making white lead. A female young person must not be employed in the part of a factory in which the process of melting or annealing glass is carried on. A girl under the age of sixteen years must not be employed in a factory or workshop in which is carried on either brickmaking or the making or finishing of salt.

Under a Special Order young persons have been prohibited

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from employment on horse hair from China, Siberia, or Russia which has not undergone disinfection.

Under the Special Order for the pottery industry there are many prohibitions. In the more dangerous processes no young person is to be employed as a dipper, and no girl under seventeen years of age and no boy under sixteen years of age is to be employed as a dipper's assistant or ware cleaner. In the less dangerous processes the age for dippers is reduced from eighteen to sixteen, and for both sexes of assistants to fifteen. No girl under seventeen years of age and no boy under sixteen may be employed as a glost placer in the placing of china, furniture or electrical fittings.

The specially dangerous processes are classified in a schedule with two parts; the first comprising lead processes, and the second comprising other processes. As a general rule no person under sixteen is to be employed in any process in the first part of the schedule, and no person under fifteen in any process in the second part of the schedule.

The Shops Act, 1912, restricts the hours of employment of young persons under the age of eighteen years to seventy-four hours per week including mealtimes. The hours for meals are complicated and will be found on p. 158, but a wholetime shop assistant normally gets one and a quarter or one and a half hours per day, according as dinner is obtained in or outside the shop premises.

The Shops Act, 1912, is brought into line with the Factory and Workshop Act, 1901 (see p. 139), by enacting that no young person is to the knowledge of the occupier of the shop to be employed in or about a shop (a) having been previously on the same day employed in any factory or workshop for the number of hours permitted by the Act of 1901, or (b) for a longer period than will, together with the time during which he has been previously employed on the same day in a factory or workshop, complete such number of hours as aforesaid. For the purpose of informing the young persons of their rights, the occupier must keep exhibited in a conspicuous place a notice stating the number of hours in the week during which a young person may lawfully be employed in or about the shop.

Addendum. (A) *Night-work.*—Section 1, sub-section 3 of the Employment of Women, Young Persons, and Children Act, 1920, is to the effect that no young person or woman shall be employed at night in any industrial undertaking except as allowed by the conventions. The conventions are given in the Appendix and women and young persons are dealt with

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separately. In the case of young persons the definition of industrial undertaking is the fourfold definition which applies to child labour (see p. 124) covering (a) mines, etc., (b) manufactures, etc., (c) works of construction, and (d) transport. In the case of women transport is omitted from the definition. In the case of young persons there are certain special exceptions, which have for the most part already been dealt with on p. 133. A Home Office circular contains the following summary of the *alterations* made by the Act. 'The practical effect of these provisions is :—(a) to raise the age for night work from fourteen to sixteen years in the case of blast furnaces, iron mills, paper mills and glass works; and (b) to prohibit night work for any young persons in letterpress printing works, electrical stations and china clay works.'

The Home Office circular is of course only dealing with factories and workshops, and the effect of the Act as an amendment of existing English law. There is a general exception 'in cases of emergencies which could not have been controlled or foreseen, which are not of a periodical character and which interfere with the normal working of the industrial undertaking,' and there is a power of suspension by Government 'when in cases of serious emergency the public interest demands it.' In the case of English law these general exceptions maintain the legality of certain exceptions already to be found in the Factory and Workshop Act, 1901.

'Night' is defined as 'at least eleven consecutive hours, including the interval between 10 p.m. and 5 a.m.' In the case of coal mines and bakeries there are special definitions.

In the case of women, there are no special exceptions, but the general exceptions are as follows : (a) in cases of *force majeure* when in any undertaking there occurs an interruption of work which it was impossible to foresee, and which is not of a recurring character, (b) in cases where the work has to do with raw materials or materials in course of treatment which are subject to rapid deterioration, when such night work is necessary to preserve the materials from certain loss, (c) in industrial undertakings which are influenced by the seasons, and in all cases where exceptional circumstances demand it, the night period may be reduced to ten hours on sixty days of the year.

(B) *Employment in shifts*.—The following is a further extract from a Home Office Circular on the Employment of Women, Young Persons and Children Act, 1920 :—

'Under section 2 of the Act the Secretary of State may *on the*

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joint application of the employer, or employers, of any factory or workshop or group of factories or workshops, and the majority of the workpeople concerned in such factory or workshop, or group of factories or workshops, and subject to such conditions as he may think necessary for safeguarding the welfare and interests of the persons employed, make Orders authorising the employment of women and young persons of the age of sixteen years and upwards at any time between the hours of 6 in the morning and 10 in the evening on any weekday, except Saturday, and between the hours of 6 in the morning and 2 in the afternoon on Saturday, in shifts averaging for each shift not more than eight hours per day. Such Orders may also permit the employment in shifts of young persons under sixteen who are at the commencement of this Act already so employed.

‘Applications for such Orders must be submitted to the Inspector of Factories for the district. Every application should be in writing, and if not actually signed by a majority of the workers concerned, must contain evidence that it is approved by such majority.

‘The Act does not prescribe the manner in which the views of the workers are to be ascertained, but it will generally be advisable that a vote should be taken (e.g. by a show of hands at a specially convened meeting, or by ballot), and in cases where the proposal affects a large number of workers, that the arrangements for taking a vote should be settled with the works committee (if any) or other representatives of the workers.

‘It is important to note that the majority referred to is the “majority of the workpeople *concerned*” in the factory or workshop. This should be understood to include only those actually to be employed in shifts, together with any other workers whose employment is or will be directly dependent on the output of the shifts, or who will otherwise be directly affected by the adoption or otherwise of the system in the process or processes in question.’

(C) *Lead Processes*.—The Women and Young Persons Employment in Lead Processes Act, 1920, was passed to give effect to certain recommendations of the Washington Conference. It contains some absolute prohibitions and some conditional prohibitions. The latter will be dealt with in a subsequent chapter.

Under section 1 of the Act it is not lawful for any person to employ women or young persons in any of the following operations :—

- (a) Work at a furnace where the reduction or treatment of zinc or lead ores is carried on ;

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- (b) The manipulation, treatment or reduction of ores containing lead, the desilvering of lead, and the melting of scrap lead or zinc ;
- (c) The manufacture of solder or alloys containing more than 10 per cent. of lead ;
- (d) The manufacture of any oxide, carbonate, sulphate, chromate acetate, nitrate or silicate of lead ;
- (e) Mixing or pasting in connection with the manufacture or repair of electric accumulators ;
- (f) The cleaning of workrooms where any of the processes aforesaid are carried on.

CHAPTER IV

RECENT LEGISLATION AS TO ADULT MALES

WE now come to the position of adult men over the age of eighteen years in respect of hours of labour.

For a long time no protection was given to men, either because they were assumed after eighteen to be physically fit for all occupations without limit, or because they were considered morally capable, either by collective action as trade unionists or individually, to look after themselves. But just as it has recently been admitted that men as well as women need the protection of minimum wage legislation, so the legislature has gradually come to recognise that some limitation of hours is advisable in certain industries for male labour. Naturally enough we see the first dim recognition of this is an industry in which if the men are considered, they are not the only probable sufferers, as the risk of injury to the general public is also present. This industry is the railway service of the country. In 1889 a section was introduced into the Regulation of Railways Act, 1889, under which it became the duty of every railway company to make periodical returns to the Board of Trade as to the persons in the employment of the company *whose duty involves the safety of trains or passengers*, and who are employed for more than such number of hours at a time as may be from time to time fixed by the Board.

The object of this enactment obviously is not to protect the signalman or train driver from undue fatigue, but to protect the public from the possible consequences in the form of railway accidents which might result from such overwork. The former object was a matter which at that time was left to be fought out between the National Union of Railwaymen and the railway companies, while as to the latter public opinion was ripe for action by the Board of Trade.

Four years later Parliament was prepared to go a step further and by section 1 of the Railway Regulation Act, 1893, it set up a cumbrous system under which the Board of Trade could limit excessive hours of work for the ordinary railway servant. This

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section excluded railway clerks and the workmen employed in the workshops of a railway company. To set these provisions going the initiative had to come from the railway servants, or any class of them, or from a Trade Union acting on their behalf, and took the form of a representation to the Board of Trade that the hours of labour of those servants or of that class (or in any special case of any particular servants) engaged in working the traffic, were excessive, and did not provide sufficient intervals of rest between the periods of duty, or sufficient relief in respect of Sunday duty. The Board of Trade was bound to inquire into the representation, and if it appeared to the Board that there was reasonable ground for complaint, it had to make an order on the company to submit to the Board within a specified period such a schedule of time for the duty of the servants, or of any class of the servants of the company, as would in the opinion of the Board bring the actual hours of work within reasonable limits, regard being had to the circumstances of the traffic and the nature of the work.

If the company either failed to comply with the order to submit a schedule of reasonable hours, or having submitted the schedule, failed to enforce its provisions, the Board of Trade might refer the matter to the Railway and Canal Commissioners, who could make a final order on the company. It was not until this stage was reached that there was any legal liability on the railway company to work to the schedule. Failure to comply with an order of the Commissioners or to enforce a schedule of hours approved by them rendered the company liable to a fine of £100 per diem.

Under this Act the hours of railway servants were slowly improved. More recently the strength of the railway Trade Unions has considerably increased, and very considerable improvements both in wages and hours have been secured by direct negotiations between the Unions and the Government Committee which since the war has been actually operating the railways.

The first definite statutory regulation of hours for male labour is to be found in the Coal Mines Regulation Act, 1908. As has already been pointed out, the special circumstances of mining have marked it out for experiments in industrial legislation. The Act of 1908 prohibited a workman from being below ground in a mine for the purpose of his work and of going to and from his work for more than eight hours during any consecutive twenty-four hours. As, however, in a mine a certain number of men must go down first to insure safety, etc., and must come up last, the

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following classes were allowed to be below ground for nine and a half hours, namely, firemen, examiners, deputies, on-setters, pump minders, fan men and furnace men.

An extension of hours is allowed by the Act on not more than sixty days in the year, but it must not exceed one hour per day, and every occasion on which this extension is used must be recorded in the register of the mine.

The Government, by means of an Order in Council, may suspend the operation of the Act in a period of emergency.

The Coal Mines Act, 1919, has further reduced the hours of underground labour by substituting seven hours for eight hours in the general part of the Act of 1908, and eight hours for nine and a half hours in the case of the excepted classes. It also provided for a further reduction of hours to six hours and seven hours respectively after 13th July, 1921, provided that a resolution is carried in both Houses of Parliament after the year 1920 to the effect that the economic conditions of the mines justifies this reduction.

The Factory and Workshop Act, 1901, contains no direct interference with the hours of adult male labour, but, of course, so far as male labour is dependent on that of women and young persons what limits the one limits the other. So far as male labour is employed in dangerous and unhealthy industries within the scope of section 76 of the Act of 1901, its hours of labour can be regulated by the Special Orders made under that section. These Special Orders are mostly concerned with regulations specifically addressed to meet special dangers. There are, however, a few instances in which the health of the persons employed is safeguarded by general prohibitions. Thus in the tinning industry every person employed must be examined by the surgeon once in every three months, and the surgeon is given power to suspend any person, and no person after suspension can be employed in tinning without his written sanction. In the same way, in the manufacture of red lead and similar compounds there is a monthly examination of every person by the surgeon, and no person after suspension by him can be employed in any lead process without written sanction from the surgeon.

There is also a monthly examination of every person employed in a chrome process, in the manufacture of chromate and bichromate of potassium or sodium, and the usual power of suspension. The Special Order for the pottery industry goes furthest in the regulation of male industry. Besides a monthly examination by the surgeon of all persons employed in any of the lead processes

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included in Part I of the Schedule, and the prohibition of the employment of suspended persons without a certificate of permission to work, definite hours are laid down for certain classes of male adult labour. No adult male who is employed as a dipper, dipper's assistant or ware cleaner may be employed in the factory in any capacity for more than forty-eight hours in any week, unless the proportion of his time spent on lead processes does not exceed eight hours a day and thirty hours a week, in which case he may work on other work not involving contact with lead up to a limit of fifty-four hours a week. No adult male who is employed as a glost placer may be employed in the factory in any capacity for more than fifty-four hours in any week. A very limited amount of overtime is allowed.

The only two statutory enactments which deal on the same footing as regards partial and total prohibitions with both male and female adult labour are the Shops Act, 1912, and the White Phosphorus Matches Prohibition Act, 1908.

In form no actual limit of hours is prescribed by the Shops Act, but by means of a statutory half-holiday, statutory intervals for meals, and by local closing orders, working hours are fairly stringently regulated.

The half-holiday is secured by a provision that on at least one week day in each week a shop assistant is not to be employed about the business of the shop after 1.30 p.m. Unless the shop comes under a closing order the occupier of a shop has the right to fix the day of the week on which his shop assistants are not to be employed after 1.30 p.m. and may fix different days for different shop assistants. Where a local authority makes a closing order for one afternoon a week, the shop is actually closed to the public at 1 p.m., but a series of shops are scheduled as unsuitable for a weekly half-holiday, and in these cases only the individual half-holiday is possible.

In the great majority of shops customers are not available before about 9 a.m. in the morning, and the Shops Act, 1912, does not contain any provisions as to the hour at which shops are to be opened. In the matter of evening shopping, the general public cannot be trusted to be reasonable, and local authorities are given power by the Shops Act, 1912, to fix the evening hour of closing on the several days of the week either throughout its area, or in any specified part of it, and either for all shops or for shops of a specified class, but it cannot fix an hour for closing earlier than 7 p.m. on any day of the week.

The intervals for meals are arranged as follows. The maxi-

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mum period of continuous employment without an interval of at least twenty minutes for a meal is six hours, but no person may be employed from 11.30 a.m. to 2.30 p.m. without an interval within that period of at least forty-five minutes for dinner, and no person may be employed from 4 p.m. to 7 p.m. without an interval of at least thirty minutes for tea. It will be seen that the six hours continuous employment is just possible, though in practice not very probable. Thus an assistant could be sent to dinner at 11.30 or 11.45, returning to work at 12.15 or 12.30 and leaving off for tea at 6.15 or 6.30. If the shop assistants have their meals in shifts, so as to keep the shop continuously open, then, unless the first shift for dinner has the last tea time instead of the first time, no one will actually get six hours uninterrupted labour. Under the Shops Act, 1913, there is an alternative scheme for shop assistants in refreshment houses under which the maximum number of weekly hours is sixty-five, exclusive of meal times, but in return for these hours there must be thirty-two whole holidays on week-days in the year and twenty-six whole holidays on Sundays.

The impression the writer gets from these figures is that the inclusion of male shop assistants in these provisions has been bought at some cost to the female shop assistants, who are at some disadvantage as compared with female labour in factories and workshops.

The White Phosphorus Matches Prohibition Act, 1908, makes it unlawful for any person to use white phosphorus in the manufacture of matches, and any factory in which white phosphorus is so used is not kept in conformity with the Factory and Workshop Act, 1901.

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INTRODUCTION

THE number of accidents which occur in industry in a single year is enormous. In the seven groups for which returns are made under the Workmen's Compensation Act—namely, shipping, factories, docks, mines, quarries, constructional work and railways there were in 1913 no less than 3,748 fatal accidents, while the non-fatal accidents numbered 476,920.¹ A recent Annual Report of the Chief Inspector of Factories accepts an estimate made by competent authorities that from twenty-five to forty per cent. of all industrial accidents are preventable if all practicable means are taken. The problem is attacked at present by inserting provisions for safety in the Factory Acts and the Mines Act, by making the employer liable to pay damages or compensation for accidents which really arise out of the work, and by the notification and investigation of accidents with a view to the discovery and institution of further preventive measures.

The Report of the Chief Inspector of Factories for the year 1913 puts in a plea for further voluntary effort in the shape of Safety Committees, and the following passage from that report is of interest:—'The experience of several British and American firms shows that, in addition to legal safeguards, reduction of accidents can best be secured by obtaining the interest and co-operation of operatives and officials through Safety Committees. The number and constitution of such committees will depend on the size of the factory and the nature of the industry. . . . The duties of these committees are to study the causes of accidents, to suggest and devise suitable means for preventing them,

¹ In 1919 compensation was given in respect of 3,293 fatal cases and 365,176 non-fatal cases.

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to keep careful records, to make frequent inspection of the machinery and plant, and to note any defects or dangers. After some experience the principal Safety Committee usually drafts a code of safety rules applicable to the particular factory. . . . Factories in which this problem has been thus attacked show a marked reduction in casualties.'

This kind of voluntary movement has recently received considerable impetus from the formation of Joint Industrial Councils under the Whitley scheme, and from the increasing practice of appointing Welfare Workers. There seems every probability that before long these voluntary schemes for reducing accidents will be linked on to the existing legal safeguards, and the mode of connection is suggested by a provision which appears in the Special Order for the pottery industry and which is primarily addressed to the kindred matter of the prevention of industrial disease. This provides that a person or persons shall be appointed whose duty it shall be to see to the observance throughout the factory of the regulations, and to carry out systematic inspection of the working of all the regulations in the departments for which they are individually responsible. He must keep in the factory a book in which he must record any breach of the regulations or any failure of the apparatus (fans, etc.,) needed for carrying out the provisions that he may have observed, or that may have been brought to his notice within the preceding twenty-four hours, together with a statement of the steps taken to remedy such defects or to prevent the recurrence of such breach. Such a person would be a combination of a safety engineer and a private inspector of the factory.

A Departmental Committee on Workmen's Compensation has recently reported on the working of the present system of compensation for injuries to workmen.¹

Part XIII. of this report deals with the question of how far the payment of compensation is or may be made a means of preventing accidents. Quotations are given from Trade Union and Parliamentary discussions which show that many persons believed that accidents were to be prevented by being made costly to the careless employer. No doubt the liability to pay compensation has some effect in this direction, but as the Report points out, 'The plan by which accidents were to be prevented by being made costly was defeated, at any rate for the time being, by the growth of accident insurance, the effect of which was that the liability imposed on the individual employer was no longer

¹ 1920, Cmd. 816.

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seriously felt,¹ and the provision of some measure of support for the injured workman and his dependants was looked upon as the sole proper function of the Employers' Liability Act. The perfection and enforcement of the body of law to which belong the Factory and Workshop Act and the various Mines Regulations Acts came to be regarded as the exclusive means by which greater safety for life and limb was to be achieved.' The Report draws attention to the experience of the United States as a source of fresh interest in the idea that schemes for compensation for accidents can themselves be made the means of encouraging measures for accident prevention. In the various States of the United States factory legislation is by no means uniform, and is not so advanced as in the United Kingdom. 'Merit rating is the means by which Workmen's Compensation Statutes have been made to advance the accident prevention movement in America. It involves recognition of the principles that the employer who takes all reasonable steps to safeguard his employees should pay less for accident insurance than the employer who is indifferent to such matters, and that the employer who is disposed to spend money on accident prevention appliances should not be discouraged by the knowledge that his competitor who spends nothing would pay the same rate of premium.' In the United States 'merit rating' has taken the form either of 'experience rating' or 'schedule rating.' By the former is meant that an employer's premiums are graded according to his past claims on the insurance company. 'Schedule rating' is 'an attempt to modify the rate of the individual plant in accordance with its physical condition as determined by inspection.' It 'takes into consideration the accident hazards presented by the buildings, equipment and operations of each plant, giving charges for certain conditions that have been shown by practical experience to produce accidents, or credits for conditions that are known to be superior from the accident prevention standpoint.' In England there has been a form of 'experience rating,' but it has been limited to firms who are insured for large risks.

The Committee took evidence from one of the Deputy-Chief Inspectors of Factories on the question of the introduction of some system of 'schedule rating.' This witness suggested that a central body should be set up which would be under the

¹ For statistics as to various industries see *Industrial Law*, p. 127. The average amount of compensation per person employed increased from 8s. 11d. in 1913 to 10s. 6d. in 1919, but compensation varies greatly in different industries.

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control of the State, but in which insurance companies would be represented, with power to give standards for different trades, compliance with which would entitle the factory occupier to obtain a specified credit. When the standards were being fixed for any particular industry representatives of that industry should be appointed or co-opted to the central body and factory inspectors with special knowledge of the subject should be called in to assist. The Committee considered that a practical scheme of schedule rating would be of considerable value in the prevention of accidents and stated that the Accident Offices Association had agreed to co-operate in a scheme of this character. It recommended that the proposed Commissioner to whom various duties were assigned, should institute enquiries, and by agreement with the insurance companies and mutual associations, prescribe a practical scheme for schedule rating.

Some little space has been given to the work of preventing accidents, because from this point onwards attention must be given to the details of existing legal safeguards, and the general effect on the reader may be to make him feel that surely this mass of detailed legislation is enough, and that the present position is satisfactory. Immense progress has been made during the last few years in regulations applicable to classes of factories, workshops, and mines, but much remains to be done in educating individual employers and workers in the importance of 'safety first.'

CHAPTER I

SAFETY REGULATIONS

WE shall begin the consideration in detail of the provisions for the safety of workers by examining the legislation for factories, and then pass on to the legislation for mines and railways. The Factory Act of 1844 contained certain provisions for safety, such as the prohibition of the cleaning of mill gearing in motion by a child or young person, and the fencing of special parts of the machinery. The inspector might give notice that machinery was dangerous, and if the employer disputed this, the matter went to arbitration. These provisions have gradually been elaborated and the present regulations are to be found partly in the Factory and Workshop Act, 1901, and partly in Special Regulations for dangerous industries.

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The first point to be dealt with will be the dangers of machinery in factories. Certain machines, or parts of machinery, will be dangerous (a) to the persons using them, (b) to the persons cleaning them, and (c) to the passer-by. It will not be necessary to adopt this as a rigid classification, but it is as well to have it constantly in mind.

The following enactments are for the special protection of women and young persons, or young persons only. (a) A woman or young person is not allowed to work between the fixed and traversing part of any self-acting machine while the machine is in motion by the action of steam, water, or other mechanical power. (b) A young person must not be allowed to clean any dangerous part of the machinery in a factory while the machinery is in motion by the aid of steam, water, or other mechanical power; and for this purpose such parts of the machinery, shall, unless the contrary is proved, be presumed to be dangerous, as are so notified by an inspector to the occupier of the factory. (c) A woman or young person must not be allowed to clean such part of the machinery in a factory as is mill-gearing while the machinery is in motion for the purpose of propelling any part of the manufacturing machinery.

The following provisions as to the fencing of machinery in factories are for the protection of the workers generally:—

(a) Every hoist or teagle and every fly-wheel directly connected with the steam or water or other mechanical power, whether in the engine-house or not, and every part of any water wheel or engine worked by any such power must be securely fenced.

(b) Every wheel race not otherwise secured must be securely fenced close to the edge of the wheel race.

(c) All dangerous parts of the machinery and every part of the mill gearing must either be securely fenced, or be in such position or of such construction as to be equally safe to every person employed or working in the factory as it would be if it were securely fenced.

(d) All fencing must be constantly maintained in an efficient state while the parts required to be fenced are in motion or use, except where they are under repair or under examination in connection with repair, or are necessarily exposed for the purpose of cleaning or lubricating, or for altering the gearing or arrangements of the parts of the machine.

There are various provisions as to self-acting machines besides those already given for the protection of women and young persons.

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In factories erected after 1st January, 1896, a self-acting machine must be so situated as to allow passers-by at least eighteen inches between the traversing carriage and any fixed structure not being part of the machine, though a self-acting cotton spinning or woollen spinning machine may be allowed to run out within a distance of twelve inches from any part of the head stock of another such machine. Further, a person employed in a factory must not be allowed to be in the space between the fixed and the traversing parts of a self-acting machine unless the machine is stopped with the traversing part on the outward run, but for the purpose of this provision the space in front of a self-acting machine is not to be included in the prohibited space.

No part of the machinery is more liable to go wrong and lead to accidents if not properly attended to than the steam boilers which generate the driving power. The following rules have been laid down for every steam boiler used for generating steam in a factory or workshop, whether separate or one of a range.

(a) It must have attached to it a proper safety valve and a proper steam gauge and water gauge to show the pressure of steam and the height of the water in the boiler.

(b) It must be examined thoroughly by a competent person at least once in every fourteen months.

(c) Every such boiler, safety valve, steam gauge, and water gauge must be maintained in proper condition.

(d) A report of the result of every such examination in the prescribed form, containing the prescribed particulars, must within fourteen days be entered into or attached to the general register of the factory or workshop, and the report must be signed by the person making the examination, and, if that person is an inspector of a boiler-inspecting company or association, by the chief engineer of the company or association.

These provisions do not apply to the boiler of any locomotive which belongs to and is used by any railway company, or to any boiler belonging to or exclusively used in the service of His Majesty.

As regards tenement factories or workshops the whole of a tenement factory or workshop is to be deemed one factory or workshop, and the owner is to be substituted for the occupier, and he must register the report referred to in this section.

As prevention is better than compensation the following rules are laid down.

A Court of Magistrates may, on complaint by an-inspector,

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and on being satisfied that any part of the ways, works, machinery, or plant (including a steam-boiler used for generating steam) used in a factory or workshop (not being a men's workshop) is in such a condition that it cannot be used without danger to life or limb, by order prohibit its use, or, if it is capable of repair or alteration, prohibit its use until it is duly repaired or altered.

Where a complaint has been made under this section, the Court or one magistrate may, on application *ex parte* by the inspector, and on receiving evidence that the use of any such part of the ways, works, machinery, or plant involves imminent danger to life, make an interim order prohibiting, either absolutely or subject to conditions, the use thereof until the earliest opportunity for hearing and determining the complaint.

Similarly a Court of Magistrates may, on complaint by an inspector, and on being satisfied that any place used as a factory or workshop or as part of a factory or workshop is in such a condition that any manufacturing process or handicraft carried on therein cannot be so carried on without danger to health or life or limb, by order prohibit the use of that place for the purpose of that process or handicraft until such works have been executed as are in the opinion of the Court necessary to remove the danger.

The provisions as to machinery moved by mechanical power are the most important of any set of provisions, and in spite of them and of the increasing vigilance of the inspectors, out of 1309 fatal accidents reported in factories in 1913 no less than 421 were due to the machinery thus moved, and of 176,852 non-fatal accidents in factories, 47,177 were due to such machinery. More than 2,500 accidents were caused by cleaning machinery in motion, 131 of which were due to actual contraventions of these provisions. The figures for 1913 were considerably worse than for 1912,¹ and the explanation given is that trade was very busy in 1913, and that a greater proportion of inexperienced persons were employed, machinery was speeded up, and generally greater risks were run. At the same time there seems to have been more conscientious reporting of accidents than usual.

These general provisions of the Factory and Workshop Act, 1901, do not cover the whole ground, and special cases are met by the power conferred on the Home Secretary by section seventy-nine of the Factory and Workshop Act, 1901. Under that section where the Home Secretary is satisfied that any manufacture, machinery, plant, process, or description of manual labour used in factories or

¹ In 1919 the number of fatal accidents was 1,385 and of non-fatal accidents, 126,023.

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workshops is (a) dangerous or injurious to health or (b) dangerous to life or limb, either generally or in the case of women, children, or any other class of persons, he may certify that manufacture, machinery, plant, process or description of manual labour to be dangerous, and he may then proceed to make Special Regulations. The great majority of the existing Special Regulations come under heading (a) and will be dealt with in the next section, but it must not be overlooked that there are some important Special Regulations under heading (b), and these will now be shortly dealt with.

Since the 1st January, 1905, the processes of loading, unloading, moving and handling goods in, on, or at any dock, wharf, or quay, and the processes of loading, unloading, and coaling any ship in any dock, harbour or canal have been the subject of Special Regulations. These Regulations cover such matters as the fencing wherever practicable of docks, wharves and quays, the provision of suitable appliances for the rescue of employed persons from drowning, the provision of proper gangways and ladders, the provision of means of lighting when work is carried on after dark, the periodic examination of all machinery, chains and other gear used in hoisting or lowering, the indication of safe-loads, the prohibition of loading beyond the safe-load, the prohibition of the employment of boys under sixteen as drivers of cranes, etc., and the use of substantially and firmly constructed and adequately supported deck stages and cargo stages. In spite of these Regulations there were in 1913, 165 fatal accidents in docks, etc., and over 10,000 non-fatal accidents.

In 1906 there also came into force a set of Special Regulations for factories, or parts of factories in which self-acting mules were used in the process of spinning. It provided for the fencing of certain parts, and it also imposed on the person for the time being in charge of a self-acting mule the duty of taking all reasonable care to ensure the observance of the general provisions contained in the Factory Act itself, as already set out above. In 1913, no less than 1,379 accidents were reported in connection with these self-acting mules.

From the 1st January, 1907, Special Regulations have been in force regarding the use of locomotives, waggons, and other rolling stock on lines of rails or sidings in any factory or workshop, etc., not being part of a railway within the meaning of the Railway Employment (Prevention of Accidents) Act, 1900. The provisions follow the lines of safety recognised in dealing with railway traffic, and include the use of a coupling pole or other suitable mechanical appliance in order to obviate the necessity for

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the body of the man doing the coupling being within the space between the ends or buffers of one locomotive or waggon and another, the giving of warnings when locomotives or waggons are in motion, the keeping in efficient condition of power capstans used for shunting, the prohibition of the employment of persons under eighteen years of age in working such capstans, and the prohibition of the employment of persons under eighteen as locomotive drivers, and of persons under sixteen as shunters.

The increasing use of electricity as a motive power or for lighting brought into existence an entirely fresh set of dangers, and these have been guarded against by Special Regulations (which came into force on 1st July, 1909) dealing with the generation, transformation, distribution and use of electrical energy in any factory, workshop, etc. These are for the most part too technical for reproduction, but the following more general provisions may be of interest. No person except an authorised person, or a competent person acting under his immediate supervision, shall undertake any work where technical knowledge or experience is required in order adequately to avoid danger; and no person shall work alone in any case in which the Home Office directs that he shall not. No person except an authorised person, or a competent person over twenty-one years of age acting under his immediate supervision, shall undertake any repair, alteration, extension, cleaning, or such work where technical knowledge or experience is required in order to avoid danger, and no one shall do such work unaccompanied. Where a contractor is employed, and the danger to be avoided is under his control, the contractor must appoint the authorised person, but if the danger to be avoided is under the control of the occupier, the occupier must appoint the authorised person. Finally, instructions as to the treatment of persons suffering from electric shock must be affixed in all premises where electrical energy is generated, transformed or used above low pressure, and also in such premises in which electrical energy is generated, transformed or used at low pressure as the Home Secretary may direct.

It may be interesting to mention that out of 68,432 works or departments which in 1913 came under Regulations or special rules, almost two-thirds, namely 42,424 came under these Regulations for the use of electricity.

The manufacture of chromate and bichromate of potassium or sodium has been scheduled as a dangerous industry. Its Special Regulations mostly concern the health of the workers, but the following provisions are for the safety of the workers. In the

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case of the use of uncovered fixed vessels containing any corrosive liquid it is provided that (a) each such vessel must, unless its edge is at least three feet above the adjoining ground or platform, be securely fenced, (b) no plank or gangway is to be placed across any such vessel unless it is at least eighteen inches wide and securely fenced on both sides, (c) where such vessels adjoin, the spaces between must either be fenced or a secure barrier placed, so as to prevent passage between them. Further, all dangerous places near to which persons are employed or near to which they have to pass must be efficiently lighted by day and night.

In the third schedule to the Factory and Workshop Act, 1901, there will be found regulations for the use of grindstones run by machinery in tenement factories. Accidents from grindstones are comparatively frequent. In 1913 the bursting of grindstones killed two people, injured twenty-five and on eighty-nine occasions constituted 'dangerous occurrences.' Accidents not involving the bursting of the stone killed one person and injured 594. The Regulations provide for fencing of various kinds, for sufficient passage room between the troughs, and for the position of the grindstone.

Besides the direct risk of accidents, the workers in a building are always exposed to a certain amount of risk that fire may break out, and they may be unable to escape. Attention was not at first given to this risk, and when it was given it was felt that a distinction must be made between new buildings, and buildings already in use. A distinction is also based on size. In a small building means of escape can be improvised on the spur of the moment, and the risks run in case of fire are not very serious. Accordingly factories and workshops in which not more than forty persons are employed are not subject to any regulations as to the provisions of means of escape. As regards all other factories and workshops the law is as follows :—

In the case of a factory the construction of which was commenced on or after 1st January, 1892, and in the case of a workshop the construction of which was commenced on or after 1st January, 1896, the occupier must have a certificate from the local authority of the district that the factory or workshop is provided with such means of escape in case of fire for the persons employed in it as can reasonably be required under the circumstances of each case, and in the absence of such a certificate the factory or workshop will be deemed not to be kept in conformity with the Act. It is the duty of the local authority to examine every factory and work-

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shop of the specified size, and on being satisfied that the factory or workshop is so provided to give such a certificate, which must specify in detail the means of escape provided.

With regard to buildings which on the dates mentioned above were already in use as factories or workshops and were of the specified size, it is the duty of the local authority from time to time to ascertain whether all such factories and workshops within their district are provided with such means of escape as are prescribed in the case of the new buildings, and in the case of any factory or workshop which is not so provided, to serve on the *owner* a notice in writing, specifying the measures necessary for providing the necessary means of escape, and requiring him to carry them out before a specified date. If the owner thinks the requirements of the local authority are unreasonable, provision is made for the dispute to be referred to arbitration. This obligation to supply means of escape from fire is put on the owner, notwithstanding any agreement he may have with the occupier, but if the owner alleges that the occupier ought to bear the whole or part of the expense he may apply to the County Court for the making of an order which is to be just and equitable under all the circumstances of the case. The means of escape when provided must be maintained in good condition and free from obstruction.

The local authority may make general bye-laws as to the provision of means of escape from fire in the case of factories and workshops *irrespective of size*.

These measures seem to have met with a fair amount of success, as in 1913 the number of deaths from fire were only five and the non-fatal accidents seventy-three, but the number of dangerous occurrences was not less than 389.

One set of workplaces has been scheduled under section 79 of the Factory and Workshop Act, 1901, and regulations made for it on the ground of special risk of fire. These workplaces are factories and workshops in which any inflammable solvent is used in the manufacture of felt hats. The means adopted are special ventilation to carry off as far as possible the inflammable vapour, the provision of air space in proportion to the number of hats being dried, and other similar rules, and a general rule against smoking in any room or place in which inflammable solvent is exposed to the air.

Closely allied with provisions of means of escape in case of fire, but applicable also to all occasions of sudden alarm, are the rules as to doors. The first rule is that while any person employed

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in a factory or workshop is within it for the purpose of employment or meals, the doors of the factory or workshop, and of any room therein in which any such person is, must not be locked or bolted or fastened in such a manner that they cannot be easily and immediately opened from the inside.

The second rule is that in every factory or workshop the construction of which was commenced on or after 1st January, 1896, the doors of each room in which more than ten persons are employed must, except in the case of sliding doors, be constructed so as to open outwards.

For some obscure reason men's workshops are excluded from these rules.

We may also consider in connection with the prevention of accidents the Welfare Orders recently made under section 7 of the Police, Factories, etc. (Miscellaneous Provisions) Act, 1916, requiring provision of first aid and ambulance arrangements in certain factories.¹ The main object of first aid is to prevent a slight accident becoming a serious accident through blood poisoning. The Report of the Chief Inspector for the year 1913 made out a case 'for a simple safety rule in all works that any cut, wound, or abrasion however slight, should at once be reported to the foreman for first aid treatment to prevent the risk of blood poisoning.' His general report was that in the larger works the foremen are versed in the art of first aid and ambulance treatment, but in the small factories minor injuries are often untreated, and numerous cases of protracted absence are reported, with occasional fatalities, through blood poisoning. The following specific instances were cited:—'At one works in the Birmingham district, where over 1,000 cases were treated by a trained nurse in ten months, not a single wound, treated without delay, became septic, though a small puncture in the knuckle by a splinter of dirty wood, which was not brought for treatment till the following day, caused a fatality. At another factory where sterilised dressings were provided, a scratch on the forefinger with a piece of rusty wire terminated fatally; here also no notice was at first taken of the wound. Three of the eleven fatal accidents in the Halifax district were due to blood poisoning. In two of these the injuries were trivial and the injured persons continued at work for two days after the accidents, whilst in the third an injury to the hand, though severe locally, could not have resulted fatally but for septic trouble.'

In all five Orders have been made requiring the provision of

¹ The full scope of this section is stated on p. 273 below.

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first aid and ambulance arrangements. The first and most important dealt with blast furnaces, copper mills, iron mills, foundries and metal works. If reference is made to the tables in the Inspector's Report classifying reported accidents according to industry it will be found that this group of industries supplies 32,848 accidents out of a total of 146,495 accidents in non-textile factories, and that the only other industry furnishing figures at all comparable with these figures is shipbuilding.

This Order, which came into force on 1st December, 1917, makes it compulsory in every factory in those industries in which the total number of persons employed is twenty-five or more, for the occupier to provide in readily accessible positions 'first aid' boxes or cupboards in the proportion of at least one to every 150 persons. The minimum contents of the box or cupboard in the shape of sterilised dressings, etc., are then specified, and a clause inserted requiring the box or cupboard to be kept stocked and in good order, and to be placed under the charge of a responsible person who is always to be readily available during working hours.

In larger factories in which the total number of persons employed is 500 or more, the occupier must provide and maintain in good order an ambulance room. This is to be a separate room, used only for the purpose of treatment and rest. It must have a floor space of not less than 100 square feet, and smooth, hard and impervious walls and floor, and have ample means of natural and artificial lighting. It must contain at least (1) a glazed sink with hot and cold water always available, (2) a table with a smooth top, (3) means for sterilising instruments, (4) a supply of suitable dressings, bandages and splints, (5) a couch, and (6) a stretcher. If persons of both sexes are employed, arrangements must be made at the ambulance room for their separate treatment. The ambulance room must be placed under the charge of a qualified nurse or other person trained in first aid, who must always be readily available during working hours, and must keep a record of all cases of accident and sickness treated at the room.

Unless a suitably constructed ambulance carriage can be obtained when required from a hospital or other institution in telephonic communication with the factory, these larger factories must also be provided with such an ambulance for the purpose of the removal of serious cases of accident or sickness.

Four other Welfare Orders of much the same character have been made as follows :—

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Where bichromate of potassium or sodium is used in tanning by the two bath process, and in dyeing other than job dyeing, first aid boxes or cupboards must be provided with a supply of colodion, and iodine solution, and plasters, ointment, lint, bandages and scissors, and a responsible person must be in charge. The provision as to ambulance rooms is omitted. This Order was made in March, 1918.

In proportion to the number of persons employed the proportion of accidents in saw mills and factories in which articles of wood are manufactured has always been high. These workplaces figure separately in the table of accidents and the 1913 Report shows a total of 4,521 accidents as occurring in them, and of these accidents thirty-six were fatal. The Welfare Order made for these workplaces on 8th November, 1918, follows the lines of the Order for blast furnaces, etc., with slight modifications, the most important of which relieves the occupier from providing both first aid boxes and an ambulance room, on condition that he provides an ambulance room, that arrangements are made to ensure the immediate treatment there of all injuries occurring in the factory, and that the Chief Inspector of Factories has given an exemption certificate.

A Welfare Order was made for oilcake mills on 21st July, 1919, and as in these places both scratches and burns have to be dealt with, the first aid boxes must contain burn dressings, and iodine solution as well as sterilised dressings. In the larger factories an ambulance room must be provided.

On 15th August, 1919, a Welfare Order was made for fruit preserving factories. It covers the provision of first aid boxes or cupboards with both sterilised dressings and burn dressings and a bottle of sal volatile.

Up to the year 1906 the notification of accidents which occurred in factories and workshops was specially provided for by certain sections of the Factory and Workshop Act for the time being in force, but in 1906 a more general Act was passed, which dealt with mines as well as factories and workshops. Further, under the Workmen's Compensation Act, 1906, employers have to make returns as to the number of injuries to their workpeople for which compensation has been paid. For this reason the functions of factory inspectors and certifying surgeons in regard to accidents which occur in factories and workshops will not be dealt with here, but will be considered in a separate section dealing with the general question of reporting and notifying ~~accidents~~, but the reader should bear in mind the point that fac-

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tory legislation has for a long time included a system of notification by which the experience gained by accidents in the past was made a stepping stone to higher things in the shape of amended legislation and special regulations.

The question of accidents in factories and workshops has been considered first because of the large number of persons employed in those places, but if we were placing industries according to risks the first place should be given to mines. The question of safety in mines was not seriously dealt with before the year 1855. Lord Ashley's Act of 1842 authorised the appointment of inspectors, but the solitary provision for safety was a rule that the steam or other engine used for bringing persons up and down the shafts was to be in charge of a male person who was at least eighteen years of age. In 1850 inspectors were given the right to enter coal mines and inquire into all matters and things connected with the safety of the persons employed therein. If the inspector was satisfied that the mine or its mode of working was dangerous or defective he could try 'moral suasion,' but if the manager remained obdurate then all the inspector could do was to give written notice to the owner or agent of the mine of the particular grounds on which he was of opinion that the coal mine was dangerous or defective, and to report the matter to the Home Office.

In 1855 an important step forward was taken by an Act of that year to amend the law for the inspection of coal mines in Great Britain. General Rules were introduced for all mines, and provision was also introduced for Special Rules for individual mines. The General Rules were seven in number, and dealt very simply with such points as ventilation, the fencing of shafts, signalling up and down any working shaft, proper breaks on machines for lowering or raising persons, and the safety of steam boiler. The Special Rules were to be such other provisions for the working of a mine as under the particular state and circumstances of the mine might appear best calculated to prevent dangerous accidents. Their weakness seems to have been that they were first approved by the mine owner and sent by him to the Home Office for approval by the Home Secretary. If the latter wished to strengthen the rules, the question went to arbitration. An Act of 1860 increased the General Rules to fifteen. Then in 1872 mines of all sorts were provided for, and the present classification of mines was introduced, under which two classes of mines were recognised—viz., (a) coal mines, which included mines of coal, stratified ironstone, shale and fire clay, and (b) metalliferous mines, which included all descriptions of mines

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not included in the definition of coal mines. The Coal Mines Regulation, 1872, legislated for coal mines and the main changes were (a) the increase of General Rules to thirty-one and (b) the introduction of the system of putting mines in the charge of certified managers.

In 1886 provision was made as regards coal mines for the formal investigation of the causes and circumstances of any explosion or accident, if the Home Secretary so directed.

In 1887 the General Rules were extended to thirty-nine. Between 1887 and 1911 there were Acts dealing with specific points, such as Checkweighing, but there was no further safety legislation, and at the present time substantially the whole law as to safety in mines is to be found in the Coal Mines Act, 1911, and the Meta'liferous Mines Regulation Act, 1872.

The first part of the Coal Mines Act, 1911, requires that the holders of all posts to which are attached any duties either of general management or of supervision of particular safety regulations, shall have definite qualifications for holding such posts, proved for the most part by the possession of a certificate. Thus every mine (except a mine employing not more than thirty persons underground) must be under a manager, who is responsible for the control, management and direction of the mine, and no person is qualified to be a manager of a mine unless he has attained the age of twenty-five years and is registered as the holder of a first-class certificate of competency under the Act. An under-manager must be registered as the holder of a first-class or second-class certificate of competency. The manager must give daily personal supervision to the mine of which he is in charge, except when absent through sickness or on leave. A manager may be in charge of more than one mine if the aggregate number of persons employed underground in these mines does not exceed one thousand, or if all the shafts lie within a radius not exceeding two miles, or if he has the approval of the mine inspector for the district, but each individual mine under his charge must have a separate under-manager. Certificates of competency for managers and under-managers are given by a Board for Mining Examinations.

Besides managers and under-managers there are subordinate officials, commonly known as firemen, examiners or deputies, whose duty it is to make inspections and generally to carry out various operations for the purpose of discovering the presence of gas, testing and maintaining the ventilation, supervising the ~~state of the roof~~ and the sides of the cuttings, and ensuring general

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safety. A fireman, examiner or deputy must (a) be the holder either of a first-class or second-class certificate of competency, or (b) must have attained the age of twenty-five years and have had at least five years practical experience underground in a mine, of which not less than two years have been at the face of the workings of a mine, and in addition must hold certificates as to his ability to make accurate tests for inflammable gas, and as to his hearing and eyesight. Further, a fireman, examiner or deputy must not have assigned to him a district of such a size or character as will prevent him from carrying out in a thorough manner all his statutory duties.

Every person on whom responsible duties are imposed with respect to safety, or to condition of the roadway, workings, ventilation, machinery, shafts, shot-firing, safety amps, electrical plant, or animals at a mine, must make and enter in a book in accordance with the regulations of the mine full and accurate reports of the matters falling within the scope of their duties.

The principle that certain workers shall have a prescribed qualification is extended to the main class of directly productive workers.

No person is allowed to work as a coal or ironstone getter otherwise than under the supervision of a skilled workman until he has had two years' experience of such work under such supervision, or unless he has been previously employed for two years in or about the face of the workings, and a skilled workman may not have under his supervision at the same time more than one person who has not had such experience or been so employed.

The direct provisions as to safety cover the following points :—

Ventilation.—Such an amount of ventilation must be constantly produced in every mine as to dilute and render harmless inflammable and noxious gases to such an extent that all shafts, road-levels, stables and workings of the mine are in a fit state for working and passing therein. A minimum percentage of oxygen and maximum percentage of carbon dioxide and inflammable gas are definitely prescribed. In addition to these general rules mines are to be classified according to the amount of the inflammable noxious gases in the main return airway, and further obligations as to ventilation may be imposed on these classes.

Safety Lamps.—Locked safety lamps are to be used in prescribed places. These lamps must be provided by the owner of the mine from types approved by the Home Office. A list of Safety Lamp Orders in force will be found in *Industrial Law*, at p. 237. Subsequent Orders are summed up as at 31st December, 1918, on

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p. 632 of volume 1 of *S. R. and O.* for 1918, and the only Order since is *S. R. and O.* 1919, No. 1902. A safety lamp is not to be used unless it has, since last in use, been thoroughly examined at the surface by a competent person appointed in writing by the manager for the purpose and found by him in safe working order and securely locked, and a record must be kept of the men to whom the several lamps are given out. Further, a competent person appointed in writing by the manager for the purpose must also examine every lamp on its being returned, and if on such examination any lamp is found to be damaged, he must record the nature of the damage, which shall be deemed to have been due to the neglect or default of the person to whom the lamp was given out unless he proves that the damage was due to no fault of his own, and that he immediately gave notice of the damage to the fireman, examiner or deputy, or some other official of the mine appointed in writing by the manager for the purpose. A person to whom a lamp is given out and who through neglect or default damages it is guilty of a punishable offence.

These provisions have been given in some detail, as they show the steps which have been taken to bring home industrial responsibility where the common safety of all the workers may be jeopardised by one person's carelessness. Safety lamps must not be unlocked nor relighted except at an appointed lamp station and by a competent person appointed in writing, who alone may have in his possession any contrivance for relighting or opening the lock of any safety lamp. Where safety lamps are required no person may have in his possession any lucifer match, or any cigar, cigarette, pipe or contrivance for smoking, and to carry out this regulation powers of search, with proper safeguards, are conferred upon the management.

Shafts and Winding.—In general there must be in every mine at least two shafts or outlets with which every seam for the time being at work in the mine shall have communication, and such shafts must afford separate means of ingress and egress available to the persons employed in every such seam. At each of these two shafts there must be proper and separate apparatus for raising or lowering persons to and from the surface, and such apparatus, if not in actual use, must be constantly available for use. Detailed provisions are made for the safety of persons while being raised or lowered, such as the provision of proper brakes and the prohibition of the uses of a shaft for raising or lowering minerals and persons at the same time. There are also provisions for the fencing of shafts and entrances, and the securing

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of shafts by casing or lining, and for proper means of signalling in shafts.

Travelling Roads and Haulage.—In mines opened since 1911 there is to be in general a provision for a travelling road for every seam distinct from the haulage road. In every mine, new and old, there are to be two main airways for each seam, and these airways are to be of such size and to be maintained in such condition as to afford a ready means of ingress to and egress from the workings. While haulage is in motion there are strict rules against persons travelling on foot on any haulage road on which the haulage is worked by gravity or mechanical power, except for special purposes and under special circumstances which minimise the risk. When the haulage is worked by gravity or mechanical power the tubs are not to be used for the conveyance of men, except on the written permission of the manager or under-manager and at the commencement and end of their employment. Refuge holes must be provided at certain intervals along a haulage road, these intervals varying with the motive power for the haulage, the rate of haulage and other circumstances. Every travelling road must be of adequate height. Proper apparatus must be provided on haulage roads and proper care taken to prevent accidents arising from tubs running away, or running back. Finally means of signalling along haulage roads must be provided.

Support of roofs and sides.—The roof and sides of every travelling road and working place have to be made secure, and such roads and places must not be used unless made secure. Detailed instructions are given in the Act in order to secure the systematic support of the roof and sides of these places.

Signalling.—The general code of signals in mines is to be such uniform code as may be prescribed by general regulations under the Act. The present set of General Regulations were made in 1913 and sections 92-97 deal with the matter. There must be in attendance at the top of every shaft by which any persons are about to be lowered into the mine a competent person, for the purpose of receiving and transmitting signals, and so long as persons are in the mine below ground, a competent person must be in constant attendance for that purpose at the top of the shaft from which persons are to be raised, and also at every entrance from the workings in which such persons are engaged into the shaft from which persons are raised.

The regulations of the mine may require telephonic communication between different parts of a mine.

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Machinery.—These provisions follow closely the corresponding provisions. Thus every fly-wheel and all exposed and dangerous parts of the machinery in or about the mine must be kept securely fixed. Steam boilers must have proper gauges and be periodically examined, and in addition to the requirements of the Factory and Workshop Act, 1901, they must be cleaned out and examined internally, so far as the construction of the boiler will permit, by the person in charge of it once at least in every three months. After 16th December, 1911, a steam boiler is not to be placed underground in any mine. A Court of summary jurisdiction may, on complaint by an inspector, and on being satisfied that any part of the machinery or plant used in a mine (including a steam boiler) is in such a condition or so placed that it cannot be used without danger to life or limb, prohibit its use, or, if it is capable of repair or attention, prohibit its use until it is duly repaired or altered.

The winding engineman, who is the person who works the machinery used for lowering or raising persons from or to the surface, must be a competent male person not less than twenty-two years of age, appointed in writing by the manager.

A winding engineman must be in attendance during the whole time that any person is below ground in the mine, but no one person is to be employed for more than eight hours in any one day.

In general the haulage system must be in charge of competent male persons not less than eighteen years of age.

Every steam engine room and boiler gallery and motor room in or about a mine must be provided with at least two proper means of egress.

Electricity.—Electricity is not to be used in any part of a mine where, on account of the risk of explosion of gas or coal dust, its use would be dangerous to life. Questions between mine owners and inspectors as to places which are dangerous are to be settled by a referee chosen from a panel of referees appointed under the Act. Electric current must be switched off from all places in which, for the time being, the percentage of inflammable gas is above the percentage named in the Act.

The use of electricity is another of the subjects to be dealt with by General Regulations, and sections 117-137 of the present General Regulations are those now in force.

Explosives.—The Home Secretary by order regulates the supply, use and storage of explosives at mines. The principal Order in force is the ~~Explosives~~ Explosives in Coal Mines Order of 1st September, 1913

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(*S.R. and O.*, 1913, No. 953), which has been extended and amended by a series of orders which have recently been consolidated by *S.R. and O.*, 1919, No. 1687.

No explosives are to be taken into or used in any mine except explosives provided by the owner, and the price, if any, charged by the owner to the workman for any explosives so provided must not exceed the actual net cost to the owner.

Prevention of Coal Dust.—Five rules are laid down for the prevention of coal dust in every mine, unless the floor, roof, and sides of the roads are naturally wet throughout. Three of these rules are aimed at preventing (a) dust entering the mine from the sorting screens, (b) the escape of dust from the tubs, and (c) the accumulation of dust on the floor, roof and sides of the roads in the mine. The other two rules deal with the daily examination of the roads, and the taking of systematic steps by watering the roads or otherwise of preventing explosions of coal dust.

Inspections as to Safety.—One or more stations must be appointed at the entrance to the mine or to different parts of the mine, as the case may require, and no workman must pass beyond any such station until the part of the mine beyond that station has been examined and reported to be safe. These inspections before commencing work are to be made by the firemen, examiners or deputies within the two hours immediately before the commencement of the work of the shift, for the purpose of ascertaining the condition of the mine so far as the presence of gas, ventilation, roof and sides, and general safety are concerned. Full and accurate reports must be recorded without delay in a book kept at the mine for that purpose and accessible to the workmen in the handwriting of the person making the inspection, and must be signed by him. In the case of a mine worked by a succession of shifts, no place must remain uninspected for an interval of more than five hours. Once at least in every twenty-four hours competent persons must examine thoroughly the state of the external parts of the machinery, the state of the guides in the shafts, and the state of the head gear, ropes, chains, cages and other similar appliances of the mine which are in actual use for the purpose of raising or lowering persons in a mine.

Once at least in every week competent persons must examine thoroughly the state (a) of all other machinery, gear, and other appliances of the mine which are actually in use, whether above ground or below ground, (b) of the shafts in which persons are

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lowered or raised, and (c) of every airway in the mine. Records must be kept on the same lines as those laid down for the reports of firemen, examiners or deputies.

Withdrawal of workmen.—If at any time the person in charge of the mine or any part of it, finds that the mine, or any place in it, is dangerous, whether by reason of the prevalence of inflammable or noxious gases, or of any other cause, every workman must be withdrawn from the dangerous place, and a special inspection must be made by a competent person, and the workmen must not be re-admitted for ordinary working purposes until the place is duly reported not to be dangerous.

If a workman discovers the presence of inflammable gas in his working place, he must immediately withdraw from it, and inform the firemen, examiner or deputy.

There are also miscellaneous provisions guarding against danger from accumulated water, and the storage and use of inflammable material below ground. A barometer, thermometer, and hygrometer must be provided, and readings taken and recorded at prescribed intervals.

Finally, every person must observe such directions with respect to working as may be given to him with a view to compliance with these safety rules, or the regulations of the mine, or generally with a view to safety. Penalties are imposed for contravention of or non-compliance with any of the provisions as to safety, not only on the person immediately guilty but also on the owner, agent and manager of the mine unless he proves that he has taken all reasonable means by publishing and to the best of his power enforcing these provisions.

General and Special Regulations.—The Home Secretary has power to make General Regulations for the conduct and guidance of the persons acting in the management of mines, or employed in or about the mines, as may appear best calculated to prevent dangerous accidents, and to provide for the safety, health, convenience and proper discipline of the persons employed in or about mines, and for the care and treatment of horses and other animals used therein. A table of contents of the present General Regulations will be found in *Industrial Law*, pp. 236-7. A point that was new in the Coal Mines Act, 1911, deserves individual notice. It regards rescue work and ambulances and is to the effect that General Regulations may require provision to be made at all mines or any class of mines in regard to all or any of the following matters :—(a) Supply and maintenance of appliances for use in rescue work, and formation and training of rescue brigades ;

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(b) Supply and maintenance of ambulance appliances and the training of men in ambulance work.

General Regulations on these points are now to be found in sections 138-149 of the General Regulations of July, 1913, and in an amending order made in 1914 (*S.R. and O.*, 1914, No. 710). In order that a man engaged on rescue work should not be in a worse position than an ordinary servant of the mine owner it was necessary to give him special rights under the Workmen's Compensation Act, 1906. He is now protected whether he is injured while training, or injured while doing actual rescue work or ambulance work. (1) Where provision has been made under the Regulations for the formation or training of a rescue brigade, any accident caused to a workman employed in or about a mine, who is with the consent of his employer being trained as a member of the rescue brigade, and arising out of and in the course of his training, shall for the purposes of the Workmen's Compensation Act, 1906, be deemed to arise out of and in the course of his employment in the mine. (2) Any workman engaged in any rescue work or ambulance work at a mine shall, for the purposes of the Workmen's Compensation Act, 1906, be deemed while so engaged to be employed by the owner of the mine.

Special Regulations for individual mines may be suggested by (a) the inspector of the division, (b) the mine owner, or (c) a majority ascertained by ballot of the workmen employed in the mine. Their object is to supplement or modify the general regulations. They are subject to the approval of the Home Secretary, and when approved by him, they have effect as if they formed part of the general regulations applicable to the mine.

Something must be said about metalliferous mines. They do not present the same dangers as coal mines, where the presence of explosive coal dust and inflammable gases is a standing menace, and the code of rules and regulations contained in the Metalliferous Mines Regulation Act, 1872, as to safety stands practically unchanged to-day. As we have seen already the hours of labour allowed for children, young persons and women have been modified by newer general provisions.

The following sections on safety may be noticed here. Section 13 deals with the safety of the general public rather than the safety of the worker, and secures the fencing of abandoned mines, though where the abandonment took place before the passing of the Act, the section only applies (a) to shafts situate within fifty yards of any highway, road, footpath or place of public resort, or in open or unenclosed land, (b) to shafts required by an inspector, in

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writing, to be fenced on the ground that they are specially dangerous. Section 18 empowers inspectors to give notice of dangers not provided for by the rules. Section 23 contains the general rules under which all metalliferous mines must be worked. There are nineteen of these general rules, and a short summary of them and of the subjects with which they deal is as follows :—

(1) Ventilation. All shafts, levels, working places, etc., must have an adequate amount of ventilation and the travelling roads to and from such working places must be in a fit state for working and passing therein.

(2) Gunpowder, etc., and Blasting. Explosives are not to be stored in the mine, and detailed rules for their use are laid down.

(3) There must be proper means of signalling and man holes for refuge to every self-acting or engine plane exceeding thirty yards in length.

(4) There must be refuge spaces in horse roads.

(5) Man holes and refuge spaces must be kept clean.

(6) (7) and (8) Shafts must be properly fenced and where necessary securely cased.

(9) Where one portion of a shaft is used for the ascent and descent of persons by ladders or a man engine, and the portion of the same shaft is used for raising the material gotten in the mine, the two portions must be securely fenced off from each other.

(10) Shafts over fifty yards in depth used for raising persons must be provided with guides and proper signalling apparatus.

(11-14) Provisions must be made for the safety of persons lowered or raised by mechanical means.

(15) Where ladders are used they must be inclined at an angle and there must be substantial platforms every twenty yards.

(16) If more than twelve persons are ordinarily employed below ground, there must be a dressing-room above ground where persons employed in the mine can conveniently dry and change their dress.

(17) Every fly-wheel and all exposed and dangerous parts of the machinery must be kept securely fenced.

(18) Every steam boiler must have a proper steam gauge, water gauge and safety valve.

(19) No person must wilfully or without proper authority remove or render useless any of the safety appliances or apparatus.

The provisions of the Act as to Special Rules are briefly as follows :—

The agent or owner of any mine may, if he think fit, transmit to the inspector of the district for approval by the Home-Secretary,

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Special Rules for the conduct and guidance of the persons acting in the management of such mine, or employed in or about the same, so as to prevent dangerous accidents and to provide for the safety and proper discipline of the persons employed in or about the mine, and such Special Rules when established are to be signed by the inspector and must be observed in and about every such mine in the same manner as if they were enacted in the Act itself. Before the Rules are established they must be posted up at the mine for a fortnight, to allow of objections being sent in to the inspector. Finally the Home Secretary has forty days after their receipt by the inspector in which to make his objections, and if the Rules are not objected to by the Home Secretary within the forty days they become established. If the Home Secretary makes objections and he and the mine owner or agent cannot agree the ultimate form of the Rules is settled by arbitration. An alternative procedure is for the Home Secretary himself to propose Special Rules, or amendment of existing Special Rules. Finally, the Mines Accidents (Rescue and Aid) Act, 1910, applied to all mines, although now, as regards coal mines, it has been superseded by section 85 of the Coal Mines Act, 1911, which has already been dealt with. As regards metalliferous mines this Act of 1910 is only brought into force by order of the Home Secretary.

The dangers of railway service, which must be carefully distinguished from the danger to which the travelling public are exposed, were specially legislated for in 1900.

The Railway Employment (Prevention of Accidents) Act, 1900, gave the Board of Trade power to make such rules as they might think fit with respect to the following subjects, with the object of reducing or removing the dangers and risks incidental to railway service.

1. Brake levers on both sides of waggons.
2. Labelling waggons.
3. Movement of waggons by propping and tow roping.
4. Steam or other power brakes on engines.
5. Lighting of stations or sidings where shunting operations are frequently carried on after dark.
6. Protection of point rods and signal wires, and position of ground levers working points.
7. Position of offices and cabins near working lines.
8. Marking of fouling points.
9. Construction and protection of gauge glasses.

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10. Arrangements of tool boxes and water gauges on engines.
11. Working of trains without brake vans upon running lines beyond the limit of stations.
12. Protection to permanent way men when relaying or repairing permanent way.

As regards matters not coming within these twelve points, if the Board of Trade consider that avoidable danger to persons employed on any railway arises from any operation of railway service, they may, after communicating with the railway company and giving them a reasonable opportunity of reducing or removing the danger or risk, make rules for that purpose.

The Board of Trade have a general power by rules made under these provisions to require the use of any plant or appliance which has been shown to their satisfaction to be calculated to reduce danger to persons employed on a railway, or the disuse of any plant or appliance which has been similarly shown to involve such danger.

The Board of Trade must give notice of its proposal to make rules, and allow a month during which objections and suggestions may be sent in. These objections or suggestions must then be considered by the Board, and a person who is dissatisfied with the Board's decision can have the matter referred to the Railway and Canal Commissioners. If the Commissioners determine that the objection is reasonable the rule to which the objection relates shall not be made.

The Board of Trade and the Commissioners, in considering objections to a draft rule, must, amongst other matters, have regard to the questions whether the requirements of the rule would materially interfere with the trade of the country, or with the necessary operations of any railway company. Where the requirements of the case would be better met by a specific order or direction than by a general rule, the Board of Trade may make such an order or direction, but in the same manner as they may make a general rule.

The powers of the Board of Trade for the inspection of railways include power to inspect any railway for the purpose of ascertaining whether there is any ground for proceeding to make rules under the Act, or whether there has been any contravention of or default in compliance with any rule made under the Act.

Rules under this Statute were not made till 1902, and those rules are known as the Prevention of Accidents Rules, 1902, (*S.R. and O.* 1902, No. 616). There was a slight amendment made

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in 1906 in reference to notice of accidents. In 1911 a substantial alteration was made for the purpose of getting new waggons fitted with brake levers on both sides, and allowing a term of years for the alteration of waggons already in use. The new rules are known as the Prevention of Accidents Rules, 1911 (S.R. and O. 1910, No. 1058).

Addendum.—On 1st January, 1922, New Regulations for the Manufacture of Aerated Waters came into force. They require the use of safety appliances as safeguards against the bursting of bottles and syphons during certain processes.

Draft regulations for the use of Woodworking Machinery have been published and are about to come into force (July, 1922).

CHAPTER II

COMPENSATION TO INJURED WORKERS

We have been examining carefully the rather elaborate provisions for the prevention of accidents in factories, workshops, docks, mines and railways, and have learnt from statistics that in spite of this code of safety an appalling number of industrial accidents occur every year. The question then arises as to the incidence of the burden of the accident. If the accident is at all serious the worker is disabled for a shorter or longer period from earning wages, and the immediate effect of the accident is that the burden of the accident, so far as it involves a loss of wages to the worker, is put upon the worker's shoulders. The employer may be put to some inconvenience by the worker's absence, but he is generally able to rearrange the duties of his workers so as to make up for the absence of one worker, and in the usual state of the labour market he has no great difficulty in providing himself with a substitute, temporary or permanent, for the injured worker. Some accidents, such as explosions, will do injury to property as well as to persons, and the employer has a very direct interest in reducing such accidents to a minimum, but it is well to realise that in the case of ordinary accidents the immediate effect is very grave for the worker, and comparatively slight for the employer. It will be seen later that an entirely new departure in the mode of dealing with the liability for industrial accidents was made when in 1897 the first Workmen's Compensation Act was passed, and the new legal ideas thus introduced will require careful statement and consideration, but a very practical point may be emphasised at once. Within a few days of a serious accident the income of the injured man comes to an end. He can generally manage for a few days, because under the modern system of paying wages, the employer keeps a few days' pay in hand. Thus sometimes a week's money is kept back, and on Friday night the worker is paid all earnings up to the preceding Friday. If then he is disabled on the following Monday afternoon, he or someone on his behalf

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would draw a full week's wages on the succeeding Friday, and wages for Saturday and part of Monday on the second Friday. A week's money is the maximum kept in hand as regards ordinary wages, though bonuses are sometimes paid monthly, and more usually wages are made up to the Wednesday evening or the Thursday evening preceding pay day. Now, if the compensation (if any) obtainable by the workman takes the form of a lump sum payable as the result of legal proceedings, then the worker has to subsist as best he can until the Court is in a position to arrive at a final adjudication of the sum which the employer should pay to the worker. The ultimate result may be that the whole financial loss to the worker is borne by the employer, but that is only an ultimate result, as for the time being such financial loss, together with a further expenditure for the costs of the legal proceedings, is being borne by the worker, and this financial pressure on the worker may be so acute that he is forced to accept an inadequate sum by way of an immediate settlement. Very often the worker is mentally unequipped for estimating damages with any precision, and is also financially in desperate circumstances, so that he is in the worst possible position for making a proper bargain. The obvious practical value of the change made by the Workmen's Compensation Acts, 1897 and 1906, is that in ordinary cases of disablement compensation takes the form of a weekly payment, which can conveniently be assessed and paid a fortnight after the happening of the accident. The question of paying a lump sum in the place of weekly payments may be raised later, but while it is being discussed the worker has at any rate some income, and is in a far more advantageous position for making a fair bargain.

Apart from the Workmen's Compensation Acts, the immediate effect of an accident which disables the worker from going on with his work is that his wages cease, and that he may or may not have a right of action against his employer which if successful will give him a lump sum of money by way of compensation. The Common Law was not concerned with the idea of a starving workman, or with the idea that the employer was making his living at the cost of the exposure of his workers to certain risks, or with any other social or humanitarian ideas. What it did say was this—the employer invites his workers to come to his premises to do work for him, under his superintendence or that of his agents, and such invitation imposes on him the duty of reasonable carefulness. If the worker could show that an accident had happened to him through the carelessness of the master, or, to use a more

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legal term, through the master's negligence, then the Common Law would give the worker damages in an action for negligence. A man invites tradespeople to come to his back door, and his friends and the postman to come to his front door. Such a man must be reasonably careful, and must not carelessly leave traps for the people who respond to his invitation, and should one of them be injured by his negligence then the injured person may obtain damages in an action for negligence. In other words the Common Law did not give damages to injured workmen because they were workmen, but because they were persons who had suffered from someone's negligence, and, as will be seen very shortly, as workers for an employer they had far less rights against the employer than they would have had if they had been strangers on his premises by invitation.

The invitation of the employer to the workers to work on the employer's premises imposed some obvious duties on the employer. Thus the building and the machinery must be reasonably safe and efficient for the purposes for which they are going to be used. Further, the employer must adopt a reasonably safe and proper system of working. It is negligent for an employer to use buildings or plant and machinery for purposes for which they are not suitable and which are likely to lead to accidents. In the same way it is negligent to use an untrained man in a position in which if a trained and experienced man is not employed accidents are likely to occur. If an employer puts a man in charge of boilers who knows nothing of boilers, or sets a man to give out plant and tackle who has had no previous experience, he is obviously inviting accidents, and they are due primarily to the employer's negligence in so carelessly selecting these men. The Common Law does not expect the employer to guarantee the competence of his workers for particular jobs, but he must select a man who is apparently fit for the work to which he is to be set. Thus, suppose an employer wants a millwright to take charge of his machine repairs. He must engage a millwright and not a tailor's cutter, but the competence of millwrights will vary, and possibly the employer will hit upon a millwright who though he has good references is sometimes very careless. If the employer has been reasonably careful in engaging his millwright he will have fulfilled his Common Law duties and cannot be charged with carelessness on the first occasion of an accident happening through the millwright's carelessness.

In an old case a workman had been injured through the failure of the scaffolding on which he was working. This failure was

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due to the foreman's negligence, but the case was heard before the Employer's Liability Act, 1880, had made an employer liable for the negligence of his foreman, and in order to succeed the workman had to prove personal negligence on the part of the employer. The Court held that such personal negligence could only be brought home to the employer by proving either that the employer had *personally interfered* with the erection of the scaffolding or that he had *knowingly employed* an unskilful and incompetent person to see to its erection, and that it was not enough for the jury to find as a fact that an incompetent person had been employed.

In the same way it is not enough for a jury to find that premises are in a defective and dangerous condition. Thus in a recent case it was proved that a chauffeur was injured through the fall of a heavy pane of glass from the top of the door of the employer's garage. The putty of the frame had perished and disappeared, and someone at some time had put a nail in the frame to keep the glass in. No evidence was put in to show that the employer had any personal knowledge of the state of this pane of glass. The High Court held that the duty of the employer to detect *secret* defects was no greater than the duty of the servant himself to detect them. There was no negligence on the part of the employer or the servant, and as far as they were concerned, the injury was caused by pure accident, and the employer was under no Common Law liability.

A recent instance of liability where there was personal knowledge of the conditions under which work was being done is to be found in the following case. A workman was employed by a firm of stevedores in loading a ship. Under special regulations the shipowner was bound to maintain safe means of access by ladder or steps from the deck to the bottom of the hold. A permanent fixed ladder leading down to the hold became so encumbered with cargo that it could not be used. Some of the workmen therefore obtained a rope ladder from the ship, which they attached to the hatch and allowed to swing loose about the bottom of the hold. One of the firm of stevedores saw this contrivance and saw the men using it, but made no objection, although it was obviously very dangerous. The man in question while using the rope ladder fell and suffered severe personal injuries and brought an action at law against his employers for damages for negligence. The Court of Appeal held that although the statutory duty under the Factory and Workshop Act of providing certain plant fell on the shipowners and not on the firm of stevedores, yet the firm had

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been guilty of negligence in their supervision of the plant used by their workmen and were liable for injury caused by that negligence.¹

Questions of personal negligence on the part of the employers do arise from time to time, but owing to the size of modern businesses and the fact that many of them are in point of form 'companies' and not 'individuals,' the proportion of accident cases in which the employer can be proved to have shown personal negligence is insignificant, if not altogether negligible.

When the Legislature has imposed a statutory duty on an employer, he can be sued at Common Law for neglect of his duty by any person injured thereby. A recent case on these lines arose like the preceding case out of the Special Regulations made for ships in the process of loading or unloading. The Regulation in question imposed a duty on the owner of a ship lying at a wharf or quay for the purpose of loading or unloading to have a gangway from the shore to the ship for the use of the persons employed in such process. A ship was lying at a quay being unloaded and was connected with the shore only by a ladder placed in a horizontal position. A party of the men employed in unloading went ashore for refreshment, and on returning had to get on board by crawling on hands and knees over this ladder. The last man fell into the river and was drowned. A gangway was at once used after this accident. The father of the deceased brought an action for damages against the owners of the ship for the loss of his son and obtained a verdict for £270.²

We may sum up the position so far by saying that a workman who is injured can bring an action at Common Law for damages against an employer where the injury has been caused either (1) by the employer's personal negligence,³ or (2) through a breach of the employer's statutory duties.

The accidents to his workmen for which an employer was not responsible at Common Law fell into two main classes. The first class consisted of accidents due to negligence of a fellow workman. The whole point of the Employer's Liability Act, 1880, was to remedy this grievance. The second class consisted of accidents which were not due to negligence at all, or were due to the negligence of some unknown person, such as the unknown person in the case on p. 191, who was responsible for securing

¹ Monaghan v. Rhodes & Sons, C.A., 24th November, 1919.

² Mackey v. J. H. Monks (Preston), Ltd., H. of L., 29th October, 1917.

³ Even in this case the workman might fail in his claim, because he was aware of the risk and had agreed either expressly or by implication to accept the risk. See *Industrial Law*, pp. 101-2.

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the pane of glass with a nail. This class of accident is sometimes spoken of as 'pure accidents.' One of the main points of the Workmen's Compensation Acts, 1897 and 1906, was to give the workmen compensation where the accident was a pure accident.

There is a third class of accident of which something must be said, namely, accidents in which the conduct of the injured man was in itself negligent and contributed to the accident. At Common Law, if the workman's own negligence was the sole cause of the accident then it was impossible for him to get damages. If there was negligence on the part of the employer and also negligence on the part of the injured workman then both at Common Law and under the Employer's Liability Act, the employer had a good defence (known technically as the defence of contributory negligence) if the employer could show that the injured workman could, by the exercise of such care and skill as he was bound to exercise, have avoided the consequences of the employer's negligence. In the Workmen's Compensation Act, 1906, the terms 'negligence' and 'contributory negligence' are not used, but in certain cases a workman who is injured by his own serious and wilful misconduct is deprived of the compensation provided by the Act. Further, as we shall see later on, the injured man's negligence may consist in his doing something which is not relevant to his employment, so that the accident arises not out of his employment but out of this irrelevant action on his part, and if this can be shown then the injury suffered by the workman is not one for which the Act provides compensation.

We must now return to the first class of accidents for which the Common Law gave no remedy—viz., accidents arising from the negligence of a fellow servant.

To understand the peculiarity of the Common Law on this subject the reader must first grasp the ordinary rule under which a master is held liable for his servant's negligence shown in the course of his duties as servant.

In this case the acts of the servant rank as the acts of the master, and the master is liable for the consequences of the servant's negligence. Thus, if a builder sends a slater to mend the roof of a house, and in doing so he carelessly drops a slate on the head of a person in the garden of the house and injures him, such person has a right of action for damages for negligence against the builder.

Now let us introduce a fellow servant into the illustration. The slater takes with him a boy, and he tells the boy to guard the ladder set up against the roof, and to warn passers-by. The

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slater then proceeds to drop slates off the roof and carelessly drops one on the head of the boy, who was himself being careful. The Common Law did not give the boy the rights which it gave to a stranger. It invented a theory (it deserves no other name) that the boy on engaging himself to work for the builder as assistant to the slater voluntarily took on himself the risk of the slater being careless and injuring him, and that it was part of the boy's contract with his employer that the employer should not be responsible for any injuries so sustained by the boy. The point is so important that it is worth while reproducing verbatim a few lines from the railway case¹ in which this principle was established. 'Put the case of a master employing A and B, two of his servants, to drive his cattle to market, it is admitted, if, by the unskilfulness of A a stranger is injured, the master is responsible; not so, if A by his unskilfulness hurts himself; he cannot treat that as the want of skill of his master. Suppose then, that by A's unskilfulness, B, the other servant, is injured while they are jointly engaged in the same service; there, we think, B has no claim against the master; they have both engaged in a common service, the duties of which impose a certain risk upon each of them, and in case of negligence on the part of the other, the party injured knows that the negligence is that of his fellow servant and not of his master. He knows when he was engaged in the service that he was exposed to the risk of injury, not only from his own want of skill and care, but on the part of his fellow servants also, and he must be supposed to have contracted on the terms that as between himself and his master he would run that risk.'

This defence of the employer, given to him by the Common Law, when he is sued by one of his workmen who has been injured by the carelessness of a fellow workman, is called the defence of common employment.

There must be a real common employment, and there are two cases in which the employment, though it might at first sight seem to be a common employment, on further examination is seen not to be really within the rule. Thus two workmen, A and B, may be working on the same undertaking, but under different masters. Then if A carelessly injures B, B has a Common Law right to get damages from A's master. B is in the position of a stranger, and not of a fellow servant, with regard to A.

Again, a master may have more than one undertaking, and have a separate set of servants for each undertaking. The ser-

¹ *Hutchinson v. York, etc., Railway Co.* 5 Exch., 343:

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vants engaged for one undertaking are not supposed to run the risk of the carelessness of the servants engaged for the other undertaking. Thus, suppose a country gentleman has a staff of servants for his house and stables, and also runs a farm. In such a case if a dairymaid in bringing home milk from the farm is carelessly driven over by the coachman, it was said that it could hardly be contended that the rule would apply.

Accidents arising from the carelessness of fellow servants are under modern conditions much more frequent than accidents arising from the personal negligence of the master. When the question first arose of bringing the law as to compensation for accidents more into harmony with actual facts, the anomaly between these two classes of accident was the only point to receive attention, and the object of the Employers' Liability Act, 1880, was to get rid of the defence of common employment in five specified sets of circumstances.

The language of the first section is explicitly directed to this end. The workman is given 'the same right of compensation and remedies against the employer as if the workman had not been a workman of, nor in the service of, the employer, nor engaged in his work.' In other words, he is put in the position of 'a stranger,' who may treat the negligence of a servant as being the negligence of the master. In the words of the Court of Appeal, 'the Act, with certain exceptions, has placed the workman in a position as advantageous as, but no better than, that of the rest of the world who use the master's premises at his invitation on business.'

The five sets of circumstances in which the injured workman can make a claim for damages are as follows :—

(1) Where the injury to the workman was caused by reason of any defect in the condition of the ways, works, machinery or plant connected with or used in the business of the employer, such defect arising from or not having been discovered or remedied owing to the negligence of the employer, or of some person in his service, and entrusted by him with the duty of seeing that the ways, works, machinery or plant were in proper condition. In considering whether machinery or plant is defective, regard must be had not merely to its condition but to its suitability for the purpose for which it is being used. Thus a plank may be in perfect condition, and yet be too short to be safely used in a particular job, so that its choice for that job is 'negligent.'

(2) Where the injury to the workman was caused by the negligence of any person in the service of the employer who has any superintendence entrusted to him whilst in the exercise of such

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superintendence. This covers the negligent performance of their duties by managers, foremen, charge hands and persons in similar positions.

(3) Where the injury to the workman was caused by the negligence of any person in the service of the employer to whose orders or directions the workman at the time of the injury was bound to conform, and did conform, and the injury resulted from his having so conformed.

Thus, the foreman sends a labourer with a message containing a direction to a workman in a distant part of the works. The labourer makes a muddle of the message, and as a consequence the workman who conforms to the mistaken direction is injured.

(4) Where the injury of the workman was caused by reason of the act or omission of any person in the service of the employer done or made in obedience (a) to the rules or bye-laws of the employer, or (b) in obedience to particular instructions given by any person delegated with the authority of the employer on that behalf, and the injury resulted from some impropriety or defect in the rules or bye-laws, or in the instructions.

(5) Where the injury to the workman was caused by reason of the negligence of any person in the service of the employer who has the charge or control of any signal, points, locomotive engine, or train upon a railway.

The claim of the workman can be met by any defence which is valid in claims for negligence at Common Law, such for instance as the defence of contributory negligence (see p. 193 *supra*), but the Act also creates a new statutory defence. The workman is deprived of his claim if it is shown that he knew of the defect or negligence which caused his injury, and failed within a reasonable time to give, or cause to be given, information of it, to the employer or some person superior to himself in the service of the employer, unless the workman was aware that the employer or such superior already knew of the defect or negligence.

For instance, A and B are using a rope which they think has worn too thin to be safe for the job they are on. They must give information of this to their foreman, and if they do not, they lose their claims if an accident happens to them through the use of the rope. On the other hand, if it is agreed between A and B that A shall go and tell the foreman, and the foreman takes no notice, and later on in the day B is injured through using the rope, then B has not lost his claim, as he was aware that the foreman already knew of the defect. The damages which can be awarded to the injured workman are assessed on the same principle as

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Common Law damages, but as a set off to the extension of the employer's liability there is in each case a maximum amount which can be awarded, and this maximum is not based on the seriousness of the injuries, but on estimated earnings. Thus, suppose two men, A and B, whose estimated earnings under the Act are the same, are injured by the same accident. A's injuries are serious and B's very serious indeed. A is awarded £200 and B is awarded £400; the maximum under the Act in both cases being £250. A gets full compensation and could not have got more in a Common Law action. B gets £250 instead of £400 or only five-eighths of what he would have got in a Common Law action. The amount of compensation which can be recovered is not to exceed the estimated earnings during the three years preceding the injury, of a person in the same grade employed during those years in the like employment and in the district in which the workman was employed at the time of the injury.

Under the Common Law an injured person need give no special notice of the fact of his injury and has two years within which to commence legal proceedings. Apparently when the Act of 1880 was passed, employers were very much afraid that claims would be invented or would be brought against them when the recollection of events had become dim, and in order to minimise these risks unnecessarily stringent and inelastic provisions were inserted as to notice of the injury and the commencement of proceedings. The injured workman loses his right under the Act unless within six weeks of the occurrence of the injury he gives notice to the employer in writing and in the form prescribed by the Act that injury has been sustained. The accident may have been notorious and the employer may know all about it, but it is still necessary to have a formal notice. In cases of grave injury the injured man may be physically incapable of seeing to the notice himself, and his relatives may be ignorant of what should be done. In some cases the employer may deliberately scheme to keep the man or his relatives quiet for the first six weeks in order to relieve himself of legal liability.

But, with only one exception, the notice within six weeks is an absolutely necessary preliminary to proceedings. The one exception is the case where the workman has been killed and the judge is of opinion that there was a reasonable excuse for the notice not being sent in time. The actual proceedings to recover compensation in the County Court must be commenced within six months from the occurrence of the accident, but when death results this time is extended to twelve months from the

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death. The proceedings take the form of an ordinary County Court action, and fees are payable on the usual scale. The passing of the Workmen's Compensation Acts, 1897 and 1906, though it in no way diminished the workmen's rights under the Employers' Liability Act, 1880, has led to a rapid diminution in the number of cases brought under the Act of 1880. The simplicity of the procedure, the saving in initial expense, the quickness with which the first instalments of compensation become payable, are all practical points which tell in favour of the Workmen's Compensation Act, and which induce many claimants who have good claims under the Employers' Liability Act to forgo their deferred and uncertain claims under that Act, in favour of immediate compensation under the Workmen's Compensation Act even though if they persisted in their claims under the Employers' Liability Act they might eventually receive much higher compensation than under the Workmen's Compensation Act. In 1898 the total number of actions under the Act of 1880 brought in the United Kingdom was 879. The average for the period 1898-1906 was roughly 700 per annum. In the next four years the average dropped to just over 200. In 1913 the number was 171, in 1918 it was only sixty-three, and in 1919 it was seventy-seven.

The Workmen's Compensation Act, 1897, was the first Act to break away from the conception of negligence as the only basis for a claim to compensation for accidental injuries. It covered in certain classes of employment claims arising from personal injury by accident arising out of and in the course of the employment. The employments selected were employment in or about a railway, factory, mine, quarry or engineering works, and in or about any building which exceeds thirty feet in height, and is either being constructed or repaired by means of a scaffolding, or being demolished, or on which machinery driven by steam, water or other mechanical power is being used for the purpose of construction, repair or demolition thereof. It will be noticed that workshops were not included, and that the line of demarcation between buildings within and buildings outside the operation of the Act was arbitrary and not very clearly defined. Within its limits the Act was a great success and its principles were given much wider scope by the Workmen's Compensation Act, 1906, which may at once be considered.

The Act of 1906 is the first of a series of Acts legislating for the protection, not merely of manual workers of all kinds, but also of clerical staffs and other workers of similar classes within a stated income limit. The inclusive clause covers 'any person

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who has entered into or works under a contract of service or apprenticeship with an employer, whether by way of manual labour, clerical work or otherwise.' The excluding clauses subtract from this wide group (a) persons not employed by way of manual labour whose remuneration exceeds £250 a year, (b) casual workers not employed for the purposes of the employer's trade or business, (c) policemen, (d) outworkers, and (e) members of the employer's family dwelling in his house.

Classes (a), (c) and (e) require no explanation or further definition. As regards class (b) it is important to notice that the workman is not excluded from the benefits of the Act unless it is proved *both* that he was a casual worker and that he was not employed for the purposes of the employer's trade or business. In a recent Irish case, which was ultimately decided by the House of Lords on appeal, it appeared that the workman in question was fatally injured while thatching a farmer's house. There was plain evidence that he was a casual worker, as he got his living by working for different farmers doing jobs of thatching and turf cutting. The judge found as facts that it was the common practice in that part of the country for farmers to thatch their farmhouses either themselves or by their servants, and that at the time of the accident the deceased man was engaged in work connected with his employer's trade or business, and accordingly he awarded compensation.¹

In another case a firm of timber merchants and saw millers bought a travelling crane, intending to erect it in their new works. The foreman engaged some temporary labour to dismantle the crane. One of these 'casual' men was on the third day of his employment badly injured. It was argued that he was not employed for the purposes of the firm's trade or business. It was held in the Court of Appeal that whether the dismantling of the crane was part of the firm's usual business or not, they in fact made it part of their business. The claimant was therefore entitled to compensation.² On the other hand, where a woman was engaged in a private house for fourteen days as 'temporary' cook during the absence on holiday of the regular cook, and injured herself in the kitchen, there was obviously no question of being employed for the purpose of the employer's trade or business, as running a private house is not a trade or business, and the only question was whether the work of a temporary cook was of a casual nature. It was held that the judge was entitled to hold

¹ *Manton v. Cantwell*, H. of L., 19th April, 1920.

² *Boothby v. Peter Patrick & Son*, C.A., 30th October, 1918.

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that it was of a casual nature, and both conditions being satisfied the claimant was not a workman of a class within the benefits of the Act.¹ As regards outworkers, a further definition is inserted by which the criterion between inworkers and outworkers is whether or not the work is done on premises under the control or management of the person who gives out the work. If the employer has not the control or management of the premises on which the work is done, he has no means of guarding against accidents, and no responsibility for accidents, and it is therefore advisable not to put any part of the burden of accidents upon him.

The Departmental Committee which has recently been reviewing the working of the Act has made certain recommendations as to the classes of persons under the Act to receive compensation, and they may be summarised shortly as follows:—In view of the general rise in wages, some of which is likely to be permanent, the Committee recommend that the income limit for persons employed otherwise than by way of manual labour should be raised from £250 to £350. As regards casual labour they recommend that a minor amendment should be made to bring the Act into line with the Insurance Acts and that the exception should be limited to 'employment of a casual nature otherwise than for the purposes of the employer's trade or business, and otherwise than for the purposes of any game or recreation where the persons employed are engaged or paid through a club, and in such cases the club shall be deemed to be the employer.' They also recommend that the definition of workman should be amended as so to cover the circumstances under which London taxi-cab drivers work their taxis, and that trawler fishermen who have a fixed wage as well as a share of profits should also be included in the Act.

Just as the definition of the persons who may have the benefit of the Act is made up of a generally inclusive provision modified by specified exclusions, so in stating the basis of the claim to compensation there is a main inclusive provision followed by certain specific exclusions.

The Act gives compensation as a general rule where 'personal injury by accident, arising out of and in the course of the employment, is caused to a workman.' It is obvious that this provision makes no direct reference to negligence, and that so long as the accident arises out of and in the course of the employment, the cause of the accident is immaterial, and the fact that there has been such an accident is the only point to be considered. The words 'arising out of and in the course of the employment'

¹ Stokes v. Wortham, C.A., 24th January, 1919.

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have been the subject of continuous litigation, and though the proportion of cases in which there is any doubt is very small compared with the enormous number of claims made under the Act, yet by this time there are enough decisions on this one clause to make a small treatise by itself. Some of these decisions must be referred to together with others on the meaning of the word 'accident,' but the reader will get a better idea of the scheme of the Act if the consideration of these decisions is postponed for the moment and the excluding provisions are first set forth.

In the first place the Act excludes from compensation injuries which do not disable the workman for a period of at least one week from earning full wages at which he was employed. The exclusion of these trivial accidents is merely a question of convenience. When it is remembered that the scheme of the Act is to share the burden of the accident between the workman and his employer, the extra burden so put on the workman is a very small matter, while the saving of trouble to the employer and to the insurance companies, on whom the real administration chiefly falls, is very great.

In the second place the Act gives no compensation for injuries proved to be attributable to the serious and wilful misconduct of the workman himself, if such injuries do not result in death or serious and permanent disablement. It is impossible to define the exact meaning of serious and wilful misconduct, but it is quite certain that it is a more restricted term than negligence. Negligence includes forgetfulness and inattention and other infirmities of human nature which have no element of wilfulness. The latter term suggests a deliberate defiance or neglect of rules and known duties. This somewhat complicated provision of the Act as to the effect of 'serious and wilful misconduct' is an attempt 'to make the punishment fit the crime.' The temporary deprivation of the injured workman of the compensation which he would otherwise have had may be a reasonable punishment for serious and wilful misconduct on his part, but if the workman as the result of the accident is dead or seriously and permanently disabled then he has already suffered a punishment more severe than human tribunals inflict even for very serious crimes, short of murder, and to add a further punishment which must also in large part fall on the man's family seems unnecessarily harsh. It is true that this merciful provision in the case of the death or serious and permanent disablement of the workman is given at the expense of the employer, but roughly it may be set off against the provisions as to trivial accidents, the burden of which as we have seen is borne wholly by the workman.

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Let us now pass to the consideration of the wording of the main phrase of the inclusive provision—namely, the words ‘personal injury by accident arising out of and in the course of the employment.’

The exact meaning of the word ‘accident’ has been the subject of many decisions and the best summary of these decisions is to be found in Part III. of the recent Report of the Departmental Committee on the Act, and it is here reproduced. ‘The meaning of the term “accident” is now well settled by judicial interpretation, and no objection has been made, as far as we can ascertain, to the construction which has been placed upon the word. In the earlier cases the Court of Appeal held that the idea of something “fortuitous and unexpected” was involved in the term “accident.” The House of Lords, however, have applied a construction which is more favourable to the workman. In the words of Lord Macnaghten,¹ ‘The expression “accident” is used in the popular and ordinary sense of the word, as denoting an unlooked for mishap or an untoward event which is not expected or designed.’ By a later case this definition was extended and it was decided that the mishap or occurrence must be looked at from the worker’s standpoint, and that whatever its cause or origin it will be treated as accidental unless designed by the workman himself.² This definition has been held to be wide enough to include such extreme cases as heat-stroke, chill developing into inflammation of the kidneys, the rupture of an aneurism in so advanced a state that it might have burst during sleep, and murder. While an accident must be due to some particular occurrence at some particular time, this condition does not necessarily exclude disease. For example, a workman contracted anthrax. It was found that at a particular time a bacillus from infected wool which he was sorting had alighted on a susceptible spot—namely, the eye, and set up the complaint. These circumstances were held to constitute an “accident.” And in the case of *Grant v. Kynock*³ the death of a workman who had contracted blood poisoning set up by germs gaining access through a scratch on the leg was decided by the House of Lords to have been due to accident. In that case it was impossible to say with certainty when the infection occurred, but the Lord Chancellor observed that while it was essential that there should be ‘some particular occurrence happening at some particular time. . . .’ what that

¹ *Fenton v. Thurley & Co.* 1903, A.C., 443, at p. 448.

² *Trim Joint District School v. Kelly*, 1914, AC p. 7.

³ 12 B.W.C.C., 78.

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particular time was immaterial, so long as it reasonably appears that it was in the course of the employment.' Diseases of gradual onset, such as lead-poisoning, are on a different footing. These cases are not accidents, because they are not traceable to any particular occurrence in the course of the employment.'

This summary may be supplemented in one or two respects. For instance, it has been held that the happening of the accident in the course of employment may be an inference from the circumstances of the employment. A very recent case which was taken to the House of Lords is of considerable importance on this point. A miner in the employment of a colliery company died in hospital on 14th December, 1917, after an operation for internal strangulated hernia. On the following day a statutory notice of accident was given to the company, and a claim for compensation made on behalf of the widow and dependant of the deceased. The ground of claim was the death of the deceased resulting from personal injuries received by him in lifting tubs in the course of his employment on 7th December, 1917. The claim came before a County Court judge in due course and was resisted by the employers on the grounds that no injury to the deceased by accident arising out of and in the course of his employment had been caused and that his death did not result from any such injury, but was due to natural causes. Medical evidence was given to the effect that the hernia might have been caused by a variety of strains such as over exertion at work, or sneezing, coughing or vomiting. There was no evidence of a strain at any defined moment of the work of the deceased. The County Court judge allowed the claim. The Court of Appeal held that the claimant had not discharged the burden of proof which lay upon her and set aside the award in her favour. The House of Lords restored the award of the County Court judge for the following reason. 'On a claim for compensation under the Workmen's Compensation Act, if the facts which are proved give rise to conflicting inferences of equal degrees of probability so that the choice between them is a mere matter of conjecture, then the applicant fails to prove his case. But where the known facts are not equally consistent, where there is a ground for comparing and balancing probabilities as to their respective value, and where a reasonable man might hold that the more probable conclusion is that for which the applicant contends, then the arbitrator is justified in drawing an inference in his favour.'¹

Again, though a workman is not deprived of his compensation because he has some weakness which makes an accident, which

¹ *Lancaster v. Blackwell Colliery Co.*, H.L. (E) 122, L.T., 162.

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would have no serious consequences for any ordinary man, a serious accident for him, yet if a man is merely seized with illness at his work and no connection between the work and the sudden illness can be shown, then there is no claim for compensation. Thus compensation was refused in two cases, in one of which the workman had a fatal apoplectic fit at work and in the other the workman had a fatal attack of long standing angina pectoris. In neither case was there any evidence of strain or special exertion connecting the work with the sudden illness.

The accident need not be an accident to the workman, so long as the injury of which he complains is *directly* due to the accident. In one case a miner was at work in a pit and an accident took place in a shaft which made it impossible for the workmen to use their usual exit from the pit. The miner was told to leave the pit by another shaft, where he had to wait an hour and a half before he could ascend. He had to wait in a cold place, and he had been sweating at his work. He caught cold, pneumonia supervened and he died. The House of Lords held that there had been an accident interfering with the normal working of the mine and in consequence of that accident the man had been exposed for a prolonged period to severe climatic conditions and his illness was due to this exposure. His injuries were due to accident arising out of and in the course of his employment, and compensation was payable.¹ Two more recent cases which went to the House of Lords will serve to show the subtleties of these decisions when there is no direct accident to the injured man.

In the first case a miner employed by a coal company finished work at 4.40 a.m. and went to the bottom of the shaft in order to leave the pit. There was some slight mishap to the bell wire, which necessitated repairs and caused an interruption in the working of the shaft. This obliged the man to wait for a considerable time in a cold and draughty place at the bottom of the shaft. In consequence he took a chill, which developed into pneumonia, and a few days later he died of that disease.

It was argued on behalf of the man's widow that the breakdown of the bell wire was an accident, that this accident caused the delay, that the delay caused the disease which ended in death, and that therefore there was an unbroken chain of causation connecting the accident with the death.

The House of Lords refused to accept this argument and compensation was refused.²

¹ *Brown v. John Watson, Ltd.*, H.L., 28th April, 1914.

² *Lyons v. Woodliffe Coal and Coke Co.*, H.L., 27th April, 1917.

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In another case the House of Lords got out of the difficulty by finding two accidents, one, which was too remote, and another, which was the direct cause of the injury. In this case it appeared that there had been a breakdown in the pumping apparatus of a coal mine, which led to an accumulation of water at the bottom of the pit. A miner who went down the pit with the intention of doing his ordinary work was ordered to bale this water out. To do this he had to stand in water up to his chest for several hours. The result was that he contracted a severe chill and was disabled from work by sub-acute rheumatism. Here again the House of Lords was prepared to treat the breakage of the pumps as too remote a cause, but there was in this case a further point. 'If the breakage of the pump must therefore be treated as a historical incident,' and not as a direct cause of injury, we have still to look for the determining factor on which the case depends the man exposed himself in performance of his duty to his employer to an extreme and exceptional degree of cold and damp, the character and effects of which he had miscalculated or through inadvertence had failed to foresee. This was 'an unlooked for mishap or an untoward event which is not expected or designed,' which is a standard definition of 'accident.' The case was covered by this definition. If the claimant had died suddenly (say, of heart disease) from the shock of the cold water, his death would clearly have been caused by accident. His injuries were none the less due to accident because his unexpected action of having to enter the water took some time to produce its consequences.¹

As regards the words 'arising out of and in the course of the employment,' it will not be possible to do more than indicate the general lines on which decisions have been given. We will begin with two cases very similar in some ways. A is on his way to work and is riding in a tram. At the moment he is not working for his employer, and any accidental injury that happens to him does not happen to him in the course of his employment, though the actual journey arises out of the employment.

B is on the same tram, but he is there because the foreman sent him on an errand and told him to go by tram. He is working for his employer and any accidental injury that happens to him arises out of and in the course of his employment. The tram overturns and A and B are both injured. A is not entitled and B is entitled to compensation. It was only in 1917 that it was finally ruled by the House of Lords that B in these circumstances was entitled to compensation. Up to that time the decisions had been

* ¹ Glasgow Coal Co., Ltd., *v.* Welsh, 1916, A.C. I.

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that the ordinary risks of the street to which both workmen were alike exposed could not be risks arising out of employment, but must be classified under some other title, such, for instance, as 'transit risks.' As this point is one of considerable practical importance some details of the circumstances and judgment are given. A boy of sixteen was employed as a plumber's mate by a firm of builders in London. In the course of his employment he was frequently sent on errands to different parts of the town, and when so employed used often to ride a bicycle supplied by his employers for that purpose. One day in August, 1915, as he was riding through the streets on his bicycle according to his instructions to fetch something wanted in the business, he came into collision with a motor car and his leg was broken. The County Court judge and the Court of Appeal disallowed the claim, on the ground that although the accident had happened in the course of his employment it was not one arising out of the employment, as he was only incurring an ordinary risk of the streets, which was shared by all the numerous members of the public who rode bicycles in the street. The House of Lords held that the boy was entitled to compensation on the ground that whenever a servant in the course of his master's business has to pass along the public streets, whether on foot or on a bicycle, or on an omnibus or car, and he meets with an accident by reason of the risks incidental to the streets, the accident is one arising out of as well as in the course of his employment. The use of the streets by a workman to get to and from his work stands on a different footing, but as soon as it is proved that the work itself involves exposure to the perils of the street, the workman is entitled to compensation for any injury so caused, and the fact that the risk he runs is common to others does not deprive him of his right to compensation if in the particular case the risk arises out of the employment. Further, it is immaterial whether the nature of the employment involves continuous or only occasional exposure to the danger of the streets.¹

There are certain dicta of the House of Lords which are helpful in deciding what is meant by 'in course of the employment.' In one case it was said, 'In the course of the employment does not mean during the currency of the engagement, but means *in the course of the work which the workman is employed to do and what is incident to it*, absence or leave for the workman's own purposes is an interruption of the employment.'²

¹ *Dennis v. White & Co.*, H.L., 14th June, 1917.
Davidson v. McRobb, 1918, A.C., 304.

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In another case it was said, 'the employment may begin as soon as the workman has reached the employer's premises or the means of access thereto. And in the same way the employment *may* be considered as continuing until the workman has left his employer's premises. The case would be different if the workman was at the time of the accident on the public highway to and from his work. His employment cannot be considered as having begun if he is merely in transit in the public street or road to and from his employer's premises.'¹

The following is an important statement as regards sailors leaving and returning to their ship after permission to be absent on leave. 'If the ship is lying at a quay which forms part of a public highway by a river or estuary, the sailor's employment for this purpose ceases when he has got off the gangway connecting the ship with the quay, and it begins again on his return when he reaches the shore end of the gangway. The employer will be liable if the accident happens after the sailor on his way back has got on to the gangway, and also if he was close to the shore end of the gangway, but, in the darkness or fog, failed to get upon it and fell into the water. On the other hand, if the ship is lying in a dock to which the public have not access as a right, and to which only persons coming on business are admitted, liability begins when the sailor enters the dock. The same principle is applied as regards cesser of liability'²

Very recently the House of Lords has discussed the question of accidents in the dinner-hour on the employer's premises. The defendants had a canteen for their workpeople which they could use or not as they pleased. To get to this canteen in the daytime the machine hands had to leave the machine building and cross the street. On 2nd October, 1918, a female machinist went to the canteen for her midday meal. Having had her meal, and while she was descending the staircase from the dining room to return to work she slipped and broke her ankle. She was awarded compensation and this was confirmed by the House of Lords. They held that although in general a workman could not properly be said to be 'in the course of his employment' during his dinner hour, the 'hour' was not a mere matter of sixty minutes, and it might well be that the workman during part of that time and while doing something quite different from working at his machine was in fact in course of his employment. In this case when the accident happened the claimant had finished her

¹ Stuart v. Longhurst, 1917, A.C., 249.

² Davidson v. McRobb, 1918, A.C., 304.

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dinner and had left the canteen, and she was coming down the stairs which were provided by her employers to enable her to get from one part of her employers' premises to another part where her work lay. There was evidence to justify the County Court judge in finding that the stairs were part of the premises where the claimant was employed, and that while passing down these stairs to where her actual work lay she was in the course of her employment. Where a workman during the hours of labour and while engaged in a matter ancillary or incidental to the work he is employed to do meets with an accident in a place provided by his employer and in which he has no right to be except by virtue of his employment, such accident, in the absence of special circumstances, occurs in the course of his employment.¹

When we come to consider accidents arising out of the employment we find two main classes of accidents which can fairly be said not to arise out of the employment—(a) accidents which arise from a risk which is not specially connected with the employment, and (b) accidents which arise from a risk which is created by the workman himself in the course of doing something which he is not employed to do.

In the first class there may be instanced a case in which an agricultural labourer was stung by a wasp with consequences more serious than usual. It was held that the labourer was no more likely to be stung by a wasp at his work than elsewhere, and the accident therefore could not be said to have arisen out of his employment. In some cases, however, the risk, though common to persons in the employment and outside the employment, as, for instance, the risk of an air raid, may be increased by some feature of the employment. In a recent case the facts were as follows:—A workman who was employed as a porter and messenger by a varnish merchant was sent on an errand to an oil and colour warehouse in London. While he was in the building in pursuance of his instructions an air raid took place, and the building was struck by a bomb, set on fire and collapsed. The workman was suffocated in the fire and his widow claimed compensation. In the County Court the judge, on the facts proved, held that there was a special risk of fire in the building where the deceased was employed at the time of the raid owing to the large quantity of highly inflammable goods upon the premises ; that *he was therefore exposed to a risk incidental to his employment to which the general public was not equally exposed*, and he made

¹ Redford v. Sir W. G. Armstrong, Whitworth & Co., H.L., 26th March, 1920.

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an award in favour of the widow. This was confirmed by the Court of Appeal.¹ The House of Lords has recently discussed this question of the connection of the accident with the employment in a case in which the facts were as follows :—A woman in the ordinary course of her employment was at work in a shed when a wall in the course of erection upon the adjacent premises collapsed and fell upon the shed, injuring the woman. The wall was not the property of her employer, nor on his premises, nor had he any interest in it. She claimed compensation, and the only question in dispute was whether the accident was one arising out of her employment. The Court of First Instance held that it was, the Court of Sessions (Scotland) reversed this decision, and the House of Lords restored the award of the Court of First Instance. The House of Lords held that in order that an accident might be said to arise out of employment it is not necessary to prove that the character of the employment has actively contributed to its occurrence. 'There were many kinds of accidents which occurred in the course of employment which did not in any sense arise out of the employment, as there might be no reason why such an accident might happen to a man in one situation rather than another. But when a man was ordered to work under a particular roof and that roof fell upon him, the accident did not properly fall within that category. The particular roof could only fall in one place, and the presence in that place of the person injured was entirely due to his employment. The Act excluded the necessity of looking for remoter causes, and the question in a case like the present was usually the simple one : Had the accident arisen because the claimant was employed in the particular spot in which the roof fell ? If so, the accident had arisen out of the employment, and there was no need to go back and search for the cause of the roof falling. Only the proximate cause should be regarded under the Act, and it was immaterial whether the cause of the roof falling was some defect in itself, or the collapse of a neighbouring wall, or a stroke of lightning. It was enough that by the terms of her employment the claimant had to work in this particular shed, and that she was, while so working, injured by an accident to the roof of the shed.

'Against such an accident her employer was an insurer under the Act.'²

Instances of the second class of excluded accidents—viz., those which arise from a risk which is created by the workman

¹ *Bird v. Keep*, C.A., 24th June, 1918.

² *Thom v. Sinclair*, H.L., 8th March, 1917.

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himself in the course of doing something which he is not employed to do, are constantly to be found in the Law Reports.

The following is a typical case:—A workman in the employ of a dock company was employed in copper work on board a ship lying in dock. He was a member of a shift which worked continuously for twenty-four hours, beginning about 8 a.m., and then had twenty-four hours off. Certain fixed times were allowed for meals, one of them being a period of half-an-hour between 3 a.m. and 4 a.m. for what was called the short breakfast. One morning during this half-hour the man was found dead in a part of the ship where he had made himself a fire of coke in an open iron vessel to keep himself warm. The hatch was closed and he had made himself comfortable near the fire with some sacks to lie on and a newspaper to read. His death was caused by inhaling carbonic oxide produced by the coke fire. The fire was not in any way required for his work and he was not authorised to make it. It was very dangerous to use the coke fire with a closed hatch. The dependants of the deceased workman claimed compensation, but the County Court judge refused to make an award in their favour. The judge held that the workman had added an unnecessary peril to his employment, a peril of his own choosing and one which his employers had not sanctioned, and therefore the accident was not arising out of the employment. The Court of Appeal supported this view of the case and dismissed an appeal made to it.¹

In a very recent case the facts disclosed were that a miner in the employment of a colliery company on 27th September, 1918, while at work in the pit struck a match to light his pipe. The consequence was an explosion by which he was so seriously injured that he died. It was an offence under the Coal Mines Act, 1911, to light a match in that pit or to have a match in possession. Notices of the Act were posted at the colliery, and the regulations were known to the miner. In the Court of First Instance the decision was in favour of the man's dependants. The House of Lords held that the conduct of the deceased added a peril which was not incidental to his employment. The proximate cause of the accident was the act of the man in striking a match, which the terms of his employment forbade him to have in his possession or to strike. The injuries were not caused by anything arising out of his employment, but by something extraneous to his employment. The case was a typical

Armistead v. Humber Graving Dock Co., Ltd., C.A., 5th November, 1918.

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example of an added risk which took the case out of the Act. No compensation was therefore payable.¹

It will have occurred to the reader that in cases like the last the workman is obviously guilty of serious and wilful misconduct. but as in cases of death or permanent disability this affords the employer no defence, it is usual to set up the defence of 'not arising out of the employment' wherever there is apparent ground for so doing. But it must be carefully borne in mind that there are some acts which amount to serious and wilful misconduct and yet give rise to accidents which can be said to arise out of the employment.

The following case is given to illustrate this point. A boy of fifteen years of age was engaged to do cleaning and odd jobs in a wood-planing workshop. His employment at first did not involve work with any machine. The boy was very anxious to be put on work on the machine. Accordingly, some weeks after his engagement, the manager of the workshop agreed to allow him at the machines. The manager showed the boy how to work a machine for planing planks of the kind known as laminers. He then told him to go on with the work and on no account to touch the machine, but to come to him at once if anything went wrong. The boy worked as he was told, quite successfully for about half-an-hour, when a laminar stuck in the machine. Instead of obeying his directions and calling the manager, he proceeded to stop the roller and free the laminar himself in the way he had seen other workmen deal with a similar situation. In making the attempt his hands were caught and crushed and he was so seriously injured that the first finger of the right hand, and the first and second fingers of the left hand had to be amputated.

The boy claimed compensation and the claim was resisted on the grounds that the accident did not arise out of his employment, and that anyhow he was disentitled to compensation as his injuries were attributable to his serious and wilful misconduct. The County Court judge decided that he was given work to do at the machine, the accident did arise out of his employment, and that his disobedience was serious and wilful misconduct, but as the injury had resulted in serious and permanent disablement, his misconduct was immaterial and he was entitled to compensation. On appeal it was held by the Court of Appeal that the judge's decision was right.²

¹ *Campbell or Robertson v. Woodilee Coal and Coke Co.*

² *Faulkner v. Roberts, C.A.*, 28th October, 1919.

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The attention of the Departmental Committee, to which reference has already been made, was particularly directed to the decision in which claims for compensation had been disallowed because the act of the workman to which the accident was due involved an added risk as well as serious and wilful misconduct. Their Report says, 'It was argued in favour of the workman . . . that his injury was attributable, putting it at the highest against him, to his serious and wilful misconduct and that pursuant to the provisions of section 1 (2) (c) his dependants ought not to be deprived of the benefits payable under the Act in case of his death, and we were invited to make a recommendation that words should be inserted in any amending Act giving the workman or his dependants the benefit of the last mentioned sub-section in such circumstances. We have considered all the decisions of the House of Lords and the Court of Appeal upon this subject, which are to the effect that if the workman is doing work that he is employed to do in an irregular or improper way he is not, in case of serious injury, disqualified from the benefits of the Act, but that if he meets with an accident while doing some act which he was not employed to do, he cannot recover compensation. The question to be decided is—Was it part of the injured person's employment to hazard, to suffer, or to do that which caused his injury? If yea, the accident arose out of his employment. If nay, it did not. In our opinion no change is desirable in this respect.'

A good deal of space has been given to this question of scope, because without adequate discussion the reader might have a very inaccurate conception of the range of the Act, but it would be regrettable if he should jump to the conclusion that the Act is a difficult one to administer because some of the border line cases require the exercise of a very careful discrimination. Hundreds of thousands of cases are dealt with every year without any serious disputes, and the proportion of cases in which litigation arises is very small.

The Departmental Committee do not propose to make any alteration in the existing limitation which confines the injuries for which compensation is payable to injuries by accident arising out of and in the course of the employment of the workman injured, and point out that it is not without significance that other States which have in recent years adopted workmen's compensation legislation have imported this classic British phrase.

Indispensable conditions for a successful claim for compensation by an injured workman are that he must observe the rules

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laid down, both as to notice of the accident and as to the time for commencing proceedings. The Act does not dispense with formalities, because, in justice to employers, there must be some formalities, but the formalities are elastic, and can be freely excused when it can be shown that the employer is not prejudiced thereby. The main object of requiring that a notice of the accident shall be given to the employer is to enable him to verify as soon as possible the fact that the accident has occurred, and if the accident has actually happened to verify the circumstances under which it happened.

Serious accidents are generally known from the reports of onlookers and the employer may even have reported the accident under his statutory obligations to report accidents and all this may have happened without any formal notice of accident from the injured man. The main object of a time limit for commencing proceedings is the fact that in general the longer the interval between an event and the legal proceedings based on the event the less reliable the evidence becomes.

The rules on these points under the Act are as follows:—Proceedings for the recovery of compensation are not to be maintainable unless notice of the accident has been given as soon as practicable after its happening, and before the workman has voluntarily left the employment in which he was injured. The notice must give the name and address of the person injured and must state in ordinary language the cause of the injury and the date at which the accident happened, and must be served on the employer. The want of, or any defect or inaccuracy in such notice is not to be a bar to the maintenance of such proceedings if it is found in the proceedings for settling the claim that the employer is not prejudiced in his defence by the want, defect, or inaccuracy, or that the want, defect, or inaccuracy was occasioned by mistake, absence from the United Kingdom or other reasonable cause; or if any prejudice to the employer can be removed by postponing the hearing, and serving a notice or amended notice.

In order to give the reader some idea of the lines on which the Courts deal with the question of notice the two following cases are given: in one there was delay in giving notice and in the other no notice in writing was given at all. In the first case it appeared that a workman injured his hand in the course of his employment on 7th April, 1915. He continued his work as usual with a bandage on his hand, and in a week the wound had healed externally. Later he had pain in his arm which he imagined to be gout. As it became worse and he was unable to do his work he went to

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a doctor. The doctor found he was suffering from blood poisoning and gave him a certificate to that effect, which he took to his employer. On May 4th the man took to his bed and on 31st May he died. He was examined by the employer's medical man on 16th May, but no formal notice of the accident was given till 29th May, two days before he died. The doctor who attended him stated that the man knew his illness was due to the wound he had received to his hand on 7th April. The widow claimed compensation and the County Court judge found that the employers had not been prejudiced by the delay in giving notice of the accident and made an award in favour of the claimant. The Court of Appeal reversed this decision on the ground that there was no excuse for the deceased not giving notice between May 4th and May 16th, and that the burden of proving that the employers had not been prejudiced by the delay was on the claimant and had not been discharged. The House of Lords allowed the appeal, holding that the decision of the County Court judge was right and justified by the facts.¹

In the second case it appeared that a young woman was employed in the kitchen of a club. A housekeeper lived on the premises and controlled the servants, with power of engaging them and discharging them. According to the statement of this young woman she cut her finger with a broken jar in the course of her work on 26th June, 1917. The finger was bound up and she went to bed as usual. Next morning the finger was discoloured and very painful, and when the housekeeper came down to breakfast she told her what had happened the day before, and showed her the injured finger. The housekeeper poulticed it during the day, but it continued to get worse, and on the 30th June by the housekeeper's permission she went home, as she was unable any longer to do her work. She then received medical treatment, but was totally incapacitated for work until August 24th and partially from that date till September 22nd. She claimed compensation under the Act, but the employers resisted the claim on the ground that no written notice had ever been served upon them as the Act required. They also alleged that the state of the claimant's finger was not due to any accident. The County Court judge accepted the claimant's story and decided that the want of written notice had not in any way prejudiced the employers in their defence, and he accordingly made an award of compensation in her favour. On appeal to the Court of Appeal it was held that the judge was entitled on the evidence given to

¹ *Eydmann v. Premier Accumulator Co.*, H.L. 23rd March, 1916.

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accept the claimant's account of how she came by her injury, and that he was entitled to treat the oral notice to the house-keeper as a fact that the employers were not prejudiced in their defence by the claimant's failure to give them a proper notice.¹

The Departmental Committee in dealing with this part of the Act, report that 'there is no doubt that the provisions cause hardship to an injured workman in a considerable number of cases where he has failed to give notice. We were informed that this often happens where a workman has sustained a slight injury, causing, for example, an abrasion of the skin which at a later date develops into septic poisoning, or where a workman has been ruptured, and does not appreciate, or in some cases recognise, his injury until it further develops at a later date. The difficulty is how best to assist the injured workman and yet afford protection to the employer.'

After considering various suggestions the Committee recommended as follows :—

1. In all mines, quarries, factories, workshops, and such other industrial establishments as shall be from time to time specified in Regulations to be made by a proposed Commissioner, the employer should be required

- (a) to exhibit notices in conspicuous places, informing the workmen of the necessity for notice of every accident, whether trivial or otherwise, to be given to a designated person ;
- (b) to keep an accident book (to which the workman should have access) in which an entry should be made of all ascertained accidents.

2. The defence of want, defect or inaccuracy of notice should not be open to an employer

- (a) where the accident is recorded in the accident book, or the workman establishes that the employer had other knowledge of the accident at or about the time of its occurrence, or
- (b) until the employer establishes that the said notices had been exhibited and the said accident book kept, or
- (c) until he has established that he has been prejudiced in his defence by the want, defect or inaccuracy of notice.

Proceedings to obtain compensation must be commenced within six months from the occurrence of the accident, or in case

♣ *Venters v. Sundridge Park Golf Club, C.A.*, 26th April, 1918.

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of death within six months from the date of death. The failure to commence proceedings within the time allowed is not to be a bar to the subsequent institution of proceedings if it is found that such failure was occasioned by mistake, absence from the United Kingdom, or other reasonable cause.

Proceedings under the Act are technically arbitrations and not law suits. It was apparently hoped that gradually a special class of arbitrators would be utilised, in the shape of works committees, but in default of arbitration by such a committee or by a single person agreed upon by the parties, the County Court judge for the district acts as arbitrator.

Committees have been established only for the coal mining industry in the counties of Durham and Cumberland. The single arbitrator is practically never used. Consequently, the hearing of claims for compensation under the Workmen's Compensation Act is in practice part of the regular work of a County Court judge, and he sits without a jury, but is entitled to have the aid of a medical assessor when necessary. The advantage over an ordinary action is that no Court fees are payable, and that the costs are carefully restricted. The percentage of cases where the claim is admitted by the employer without recourse to proceedings is about ninety-eight per cent.

The Departmental Committee, while satisfied that the County Court has given satisfaction as a tribunal, yet feel that a great deal is to be said for the simpler procedure generally adopted in the United States of America. There it is customary to have an Industrial Accident Board, whose main duty it is to see that the law is enforced. Their proceedings are more or less informal, and a successful feature of their work is giving information to injured workmen as to their rights, and making all reasonable efforts to bring the parties to an agreement. Points of law can be and are taken to the Courts of Law. One incidental advantage of the American system is that there is far more uniformity of practice in dealing with the settlement of claims and in making awards than is possible under the British system, under which in England alone there are fifty-six County Court judges and 474 registrars dealing with claims and agreements to settle claims.

The Committee feel that ultimately, when the proposed Commissioner has got to work, a system of District Commissioners may be able to do the work of these Accident Boards, and in the meantime they feel that an immediate improvement of the existing system is possible on the following lines :—

Periodical official convocations of the County Court judges and

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the registrars should be held, at which the administration of the Act by the Courts should be discussed and an effort made to bring uniformity so far as practicable.

The registrars should undertake

- (a) to give information free of expense to the injured workmen or their dependants as to the benefits provided by the Act and the necessary procedure to protect their rights. This should be advertised in workplaces, post offices and labour exchanges ;
- (b) to act as mediators between the employer and the injured workman or his dependants upon the request of both parties.
- (c) to be empowered, if both parties assent, in the event of a dispute as to the workman's condition, to refer the matter to the medical referee, whose certificate shall be final.

The next subject for consideration is the method of compensation. Except in the case of fatal accidents, the payment of a lump sum is discarded (unless the parties voluntarily agree to it) and the payment of a weekly sum proportionate to the wages of the injured person is substituted.

Fatal accidents do not quite reach one per cent. of the total number of accidents, so that in the vast majority of cases compensation takes the form of a weekly payment. We will begin with the claims for non-fatal accidents. During total incapacity for work the weekly payment is 50 per cent. of the workman's average weekly earnings during the previous twelve months, but with a fixed maximum. Before the war this maximum in the case of adults was 20s. a week, but the rise of wages since August, 1914, has made this limit absurd, and at the moment it is 35s. This extra provision was made from 1st January, 1920, and is in force during the continuance of the present war and a period of six months thereafter.¹

The Report of the Departmental Committee which has been investigating the working of the Act has reported in favour of an increase in the percentage of past earnings payable as compensation from 50 per cent. to $66\frac{2}{3}$ per cent. The three workmen's representatives on the Committee advocated an increase to 100 per cent., and, were human nature different from what it is, a good deal could be said for this proposition. But under existing limitations there is no doubt that the payment of full wages during incapacity would lead to an increase of carelessness in small matters (if not in large), an exaggeration of small disable-

¹ This period has recently been extended to 31st December, 1922.

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ments and a general increase of 'malingering.' A good practical case can be made out against the payment of full wages during disablement. On the other hand, there is so little margin in wages over the bare cost of living that the payment of only 50 per cent. of wages during disablement in general means a very considerable hardship. Even if payments for rent, clothes, and small personal pleasures are entirely suspended, weekly payments must be made for food, fuel and lighting, and these have been estimated to average from 60 per cent. to 65 per cent. of the earnings of a working class household. The increase of the weekly allowance from 50 per cent. to $66\frac{2}{3}$ per cent. seems reasonable, and likely to do more good than harm. A second proposed change is an increase in the maximum weekly payment from 35s. a week to £3 a week. This increase seems to be in right relationship to the two material factors, namely (a) the proposed increase in the percentage from 50 per cent. to $66\frac{2}{3}$ per cent. of part earnings, and (b) the permanent increase in rates of wages.

So far only total incapacity has been mentioned. Partial incapacity is often met with as the *permanent* result of an accident, but as a rule if a complete restoration to health and the old earning capacity is expected, the injured man will remain at home until he is completely fit for work again, or at any rate until he is fit for whole time employment. Temporary partial incapacity is therefore not very frequently met with in practice. Compensation for it cannot exceed the limits set for total incapacity, nor can the compensation together with the actual earnings be at a higher rate than the old earnings. In practice it is usual to give the claimant half his loss of earnings. Thus, suppose a man had been earning 70s. a week, and after a time he is fit to go back and do light work for which he is paid 60s. a week, he would in general be awarded 5s. a week compensation, though there is nothing in the Act to prevent him having the full 10s. a week. The Departmental Committee recommend that the weekly payment for partial incapacity shall be definitely fixed as two-thirds of the difference between the workman's average earnings before the accident and his actual or possible earnings in suitable employment after it.

Loss of wage earning power is the sole basis of the compensation. In legal proceedings under the Common Law and the Employers' Liability Act a sympathetic jury will often take into consideration the suffering which the plaintiff had to bear, or some disfigurement which results from the accident, and special expense to which he has been put. The first and last of these matters

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are not relevant under the Workmen's Compensation Act, and the second can only be considered so far as it may be a material factor in future earnings. Thus, a woman's appearance is in certain occupations a factor in earnings, and if by an accident she is permanently disfigured, this is a point to be considered in estimating her future earning capacity. So in the case of a man who had a blind eye, but the blindness was not apparent, it was held that when by reason of an accident the blind eye had actually to be removed, one of the matters which could be considered in estimating future earning capacity was the depreciation of the man's value in the labour market owing to his having become visibly a one-eyed man.

Certain minor points as to the assessment of compensation must be noticed. As has already been stated, if the incapacity lasts less than one week no compensation is payable. If the incapacity lasts one week but less than two weeks, no compensation is payable in respect of the first week. If the incapacity lasts two weeks or over, compensation is payable for the whole period of incapacity, including the first week. The evidence seems to be clear that these provisions tend to prevent a recovery in the first fortnight. The Departmental Committee recommend that in their place there should be a waiting period of three days with no dating back. Compensation is based on average weekly earnings. If the workman has been employed for twelve months or more, the earnings are to be averaged over the twelve months preceding the accident by dividing by fifty-two. If the workman has not been in employment for the whole of the twelve months then they are to be averaged over the period of service. Average weekly earnings are to be computed in such manner as is best calculated to give the rate per week at which the workman was being remunerated.

When the workman has two or more employments running concurrently his average weekly earnings are to be computed as if all his earnings were earnings in the employment of the employer for whom he was working at the time of the accident.

The word earnings is used in the technical sense of a return for services rendered to an employer. Compensation to which a workman is entitled for hours of time when he was acting as delegate for his Trade Union, and as inspector of a mine on the men's behalf was not in a recent case reckoned as part of his earnings.¹

In the case of persons under twenty-one years of age there were two exceptional provisions in the Act of 1906. If the workman

¹Wild v. J. Brown & Co., Ltd., C.A., 4th November, 1918.

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earned less than 20s. a week, the compensation payable was a sum not exceeding his average weekly earnings during the preceding twelve months or any less period of service with the same employer, with a maximum of 10s. Again, where a workman was at the date of the accident under twenty-one years of age, and he applied for a review of his compensation and the review took place more than twelve months after the accident, the amount of the weekly payment might be increased to any amount not exceeding 50 per cent. of the weekly sum which the workman would probably have been earning at the date of the review if he had remained uninjured, but not in any case exceeding £1.

The Departmental Committee recommend that having regard to the present rate of wages paid to persons under twenty-one and to their proposal as to raising weekly payments to $66\frac{2}{3}$ per cent. of past earnings, the simplest way of bringing the provisions for such persons into proper relationship with the provisions for adults is to adhere to the $66\frac{2}{3}$ per cent. of past earnings in all cases, but to allow reviews to be made on the basis of probable earnings at the expiration of a shorter period than twelve months.

A more difficult practical question is that of the commutation of weekly payments. Weekly payments are a great protection to the workman if he only realised it, but naturally they give a good deal of trouble to employers, and to the insurance companies who are behind the employers. They involve weekly entries, with all its attendant clerical work. An insurance company can afford to be generous in commuting payments, if only to make savings in this way. But very often in cases where the disablement is likely to last any considerable length of time there is no need to be generous, as the injured man is dazzled by the prospect of a lump sum, very much larger than he has ever had the chance or the expectation of handling. He is not a mathematician, and cannot easily reckon the comparative value of a lump sum and a series of weekly payments. Again, working class patients who necessarily have no medical knowledge to steady them, are apt to be either unduly pessimistic or unduly optimistic about their ailments. If they are pessimistic as to the time of their return to work, the insurance company is under no obligation to make an offer of a lump sum, while, if the man is optimistic as to his speedy return to work the insurance company can settle with him at a cheap rate. The insurance company can often make a bargain to pay a lump sum to an injured man which at the time delights the man, but is yet very good business for

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the company. The Act does protect the workman to a certain degree, but in the view of the Departmental Committee more might still be done. The legal position at present is as follows :—

During the first six months of disability the injured workman has a right to weekly payments, and he cannot be forced to commute them for a lump sum, but commutation is legal and the workman can at any time agree to accept a lump sum. After the employer has continued the weekly payments for not less than six months he has the right to insist on commutation, and the amount to be paid depends on whether the incapacity is permanent, or whether recovery is only a question of time. If the incapacity is permanent then the injured workman is commuting a weekly payment which he will otherwise draw for the rest of his life. He is in fact an annuitant. In this case the Act fixes quite definitely the sum to be paid by way of commutation. It is to be such a sum as would, if invested in the purchase of an immediate life annuity from the National Debt Commissioners through the Post Office Savings Bank, purchase an annuity for the injured workman equal to 75 per cent. of the annual value of the weekly payment.

If the incapacity is not permanent, then the employer can either negotiate with the injured workman and get him to agree to a lump sum, or he can commence arbitration proceedings and have the sum payable ascertained by the County Court judge or other arbitrator.

There are therefore two classes of voluntary agreements as to commutation of weekly payments—namely, those made during the first six months of incapacity, and those made after six months incapacity. In the first class of cases the injured workman cannot be forced to commute, and in the second class he can be forced to commute, but he can insist on the County Court judge fixing the terms.

The protection afforded by the Act to the injured workman where the lump sum is fixed by agreement consists partly of a system of compulsory registration of agreements, and partly of a limited power of reviewing agreements vested in the registrar and judge of the County Court. The rule as to registration is that a memorandum of the agreement as to the *redemption of a weekly payment* by a lump sum must be registered with the registrar of the County Court, and the agreement, if not so registered, does not, nor does the payment of the sum payable under the agreement, exempt the person by whom the weekly payment is payable from liability to continue to make that weekly payment,

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unless he proves that the failure to register was not due to any neglect or default on his part.

In the year 1913 there were 13,025 cases of commutation of weekly payments. In 7,985 of these cases the agreement was made within the first six months after the accident, and in 5,040 cases the six months had expired. The number of cases in which the amount was settled by the County Court judge was only 346. There were therefore nearly 13,000 cases requiring registration, but as a matter of fact only 9,953 were registered.

When the memorandum of agreement is sent to the registrar for registration he has the following powers. If it appears to the registrar on any information which he considers sufficient that an agreement as to the *redemption of a weekly payment* by a lump sum should not be registered by reason of the inadequacy of the sum, or by reason of the agreement having been obtained by fraud or undue influence or other improper means, he may refuse to record the memorandum and refer the matter to the judge, who shall make such order as under the circumstances he may think just.

If the memorandum is registered and it afterwards appears that the agreement was obtained by fraud, or undue influence, or other improper means, the judge has a similar power of removing the record and making such order as he may think fit, but he can only exercise this power within six months after the registration.

The words 'redemption of a weekly payment' have been put into italics because the Courts of Law have put a somewhat limited interpretation on them. It has been held that the provisions stated above do not apply where the agreement to pay a lump sum in lieu of weekly payments has been come to before any weekly payments have in fact been made. Further, even if weekly payments have been made, and a question subsequently arises as to whether the liability for such weekly payments continues, an agreement to pay a lump sum in extinction of such liability is not an agreement for the redemption of a weekly payment which requires the approval of the registrar as to the adequacy of the amount before registration. One witness before the Departmental Committee said, 'the result of recent decisions is that an increasing number of cases are now being taken outside the registrar's jurisdiction by the simple expedient of not making any weekly payment, or stopping compensation for a fortnight, and then filing an agreement for a lump sum.'

The opinion of the County Court judges as a whole was that in these cases workmen were in many cases induced to accept

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quite inadequate sums. The Committee therefore recommend that every agreement by a workman with his employer to accept a lump sum in satisfaction of the liability under the Act, or which has the effect of precluding him from claiming under the Act, should be subject to the approval of the County Court registrar, who should have power to refuse to record the agreement on any grounds he considers sufficient, and upon such refusal should refer the agreement to the judge. The Committee make detailed recommendations as to the powers to be conferred on registrars, so that they may be able to protect workmen adequately against improvident bargains.

Where the injury is fatal the amount of compensation is naturally a lump sum. The amount varies not only in proportion to the man's earnings but also according to his family circumstances. The normal case is that of a man who leaves dependants wholly dependent upon his earnings. The subsidiary cases are (a) those where there are dependants, but they are only in part dependent on his earnings, and (b) those where there are no dependants of any kind. In the normal case, as defined above, the compensation as granted by the Act of 1906 was to be a sum equal to his earnings in the employment of the same employer during the three years next preceding the injury, or 156 times the average weekly earnings if the period of such employment was less than three years, with a minimum limit of £150 and a maximum limit of £300. The subsidiary case of partial dependants is to be dealt with as the parties may agree, or in default of agreement, by arbitration, but so that the amount payable does not exceed what would be payable in the normal case and is reasonable and proportionate to the injury to the dependants. The subsidiary case of no dependants is met by the payment of the reasonable expenses of the injured workman's medical attendance and burial, with a maximum limit of £10.

The term 'dependants' is given a wide definition and embraces 'such of the members of the workman's family as were wholly or in part dependent upon the earnings of the workman at the time of his death, or would, but for the incapacity due to the accident, have been so dependent.'

'Members of a family' means wife or husband, father, mother, grandfather, grandmother, step-father, step-mother, son, daughter, grandson, grand-daughter, step-son, step-daughter, brother, sister, half-brother, and half-sister.

Illegitimacy is not a bar where the deceased person is the parent or grand-parent of an illegitimate child, or the deceased person

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is himself illegitimate and the dependant is his parent or grand-parent.

Posthumous children can be included amongst dependants.

The Departmental Committee makes suggestions for the drastic alteration of the Act in respect to compensation in case of a fatal accident coming within the Act. The scheme is rather complicated but very ingenious, and raises the maximum liability to the sum of £800, but divides it into three portions—namely, widow's portion £250, children's portion £500, other dependants' £50. Where there are no claims for the first two portions (widow and children) then the other dependants' portion may be as much as £250. The children's portions are not to be applied to individual cases, but will be pooled, and used to establish a central fund, out of which the following allowances will be paid. Where there are children under fifteen years of age there shall be a weekly allowance of ten shillings for the first child, seven shillings for the second child and six shillings for every other child ; such allowances to continue in all cases until the child reaches the age of fifteen.

As to burial and medical expenses allowed where there are no dependants the suggestion is that these shall be increased to £15.

We have now dealt with the main scheme of the Act, with the exception of the inclusion of certain industrial diseases as accidents. So far as the Act deals with diseases it can be more conveniently dealt with as part of the subject of provisions to minimise disease due to industry. But besides the main scheme of the Act there are subsidiary provisions which are of considerable importance from the point of view of completeness and smooth working. The first of these subsidiary matters is the question whether an employer can contract himself out of the Act by individual bargains with his workpeople. The Employers' Liability Act was silent on this point, and the House of Lords held that silence gives consent, so that an employer and a worker could if they pleased bargain that that Act should not apply to their relationship. There was, however, a strong feeling that the usefulness of the Workmen's Compensation Act would be very seriously diminished if contracting out were allowed. There were, however, in existence in the case of some of the great railway companies and other large employers certain combined sickness and accident funds which gave analogous benefits, and these employers were sufficiently strong to obtain the insertion of a clause which on certain terms allows the employer to substitute an alternative scheme for the scheme inserted in the Act. The most important

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provision is that such alternative scheme shall be at least as beneficial to the workman as the scheme of the Act, and where the employer's scheme is one to which the workman has to subscribe, then the employer's scheme must confer benefits at least equivalent to the workmen's contributions in addition to the benefits to which they would have been entitled under the Act itself. The administration of this part of the Act is put into the hands of the Registrar of Friendly Societies. His first duty is to ascertain the views of the employer and his workmen. He must then certify that the proposed scheme of compensation, benefit, or insurance provides scales of compensation not less favourable to the workmen and their dependants than the corresponding scales of compensation in the Act itself, and that any contributory scheme confers additional benefits equivalent to the workmen's contributions, and that a majority of the workmen to whom the scheme is applicable are in favour of the scheme. The voting of the workmen on the scheme is taken by ballot. Finally, the Registrar must not certify a scheme which compels a workman to join it as a condition of his hiring, or which does not contain provisions enabling a workman to withdraw from the scheme on fair terms.

These certified schemes remain under the supervision of the Registrar so far as is necessary to secure continued conformity with the conditions laid down and fair administration. There has been a progressive decline in the numbers of workmen affected by these schemes. In 1900 the number was 123,000. The Registrar of Friendly Societies reported that on 31st December, 1913, there were 105 certified schemes in operation in England and Wales and two in Scotland, affecting 68,000 workpeople. There was one very large railway scheme which embraced 31,721 workmen out of a total of 35,401 workmen employed. There were nine schemes for mines, embracing 17,142 workmen out of a possible 17,593. The average number in each scheme works out under 2,000. There were ninety-four factory schemes, embracing 15,434 workmen out of a possible 16,401. The average membership here is quite small—namely, 164. It will be noticed that in these schemes a little over 7 per cent. of the workpeople exercised their rights of standing out of these alternative provisions. Finally, there was one scheme for a large quarry which embraced the whole of the 775 workmen employed there. By the end of 1918 the number of workmen included in these schemes had fallen from 68,000 to 63,000.

One of the difficulties of administration which the Act specially

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tackles is the question of what is to happen when an accident occurs to X on premises on which A has undertaken to execute work or which are otherwise under his control, but X is not in the employ of A, but of B, who has a contract with A under which B is doing part of the work. In circumstances like these B is often spoken of as a sub-contractor. Now sub-contracting has a wide range. It may be that A is a building contractor who has undertaken to erect a complete building, but does not care to do the plumbing and so sub-lets that part of the work to a plumber, B, who employs his own men, including X. Or it may be that A is a manufacturer who gives out part of his work on a large scale to be done at piece prices on his own premises by a piece worker, B, who provides his own labour, including X. In the latter case X may clock in with A's men, and be subject to the same works discipline, and may even be paid by A's clerks out of the money due to B and yet still be in B's employ, and it is easy to see that X may be in some doubt as to whether he is technically in A's employ or in B's employ. If X is injured and takes proceedings against A when he should have proceeded against B or *vice versa* then he is wasting his time and money. If X takes proceedings against both A and B, though he may succeed against one he will lose against the other and will have to pay his costs.

The Act of 1906 gets over the practical difficulty by putting the liability to pay compensation to X on A, the principal contractor or principal employer, giving A the right to be indemnified by B if he can show that but for this special provision B could be liable to pay compensation. There is one exceptional case. Where the contract relates to threshing, ploughing or other agricultural work, and the sub-contractor provides and uses machinery driven by mechanical power for the purpose of such work, then if a workman in the employ of the sub-contractor is injured by accident in the course of his employment, he must claim compensation from the sub-contractor and not from the farmer who employs the sub-contractor. The conditions of such exceptional employment are not likely to produce the confusion in the workman's mind which may well arise in other cases of sub-contracting.

Another case of difficulty is the inability of the employer to pay the full compensation due from him in a particular case because he has become bankrupt, or is otherwise unable to pay his debts and obligations in full. The right of the injured workman to claim in the employer's bankruptcy for a dividend on his claim is not an adequate solution. The Act distinguishes between bankrupt employers who have insured themselves against claims

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and those who have not. In the first case the insurance company have in return for a premium undertaken to pay the workman's claim, and though technically that claim is against the employer, yet there is no reason either in law or in morals, why the insurance company should pay a reduced sum because the employer is only able to pay, say, 5s. in the pound on his debts. The Act boldly cuts the legal knot, and brings the injured workman into direct relationship to the insurance company, and gives him the same rights against the company as the employer had. The precise phraseology of the Act is that where any employer has entered into a contract with any insurers in respect of any liability under the Act to any workman, then in the event of the employer becoming bankrupt or making a composition or arrangement with his creditors, or if the employer is a company, in the event of the company having commenced to be wound up, the rights of the employer against the insurers as respects that liability are to be transferred to and vest in the workman, but the insurers are not to be under any greater liability to the workman than they would have been to the employer.

If the employer has not insured himself against claims under the Act, then, in case of his bankruptcy, or if the employer is a company, then in the case of the winding up of the company, claims under the Act are treated as preferential claims up to the sum of £100 in each individual case. Preferential claims of this kind, together with certain other preferential claims, are paid in priority to the claims of the ordinary creditors of the employer.

If the employer was only partially insured, or any individual claim against an uninsured employer exceeds £100, then there is a balance of the claim which remains unpaid, and as regards such balance the workman may claim for a dividend in the bankruptcy or winding up on an equal footing with the ordinary creditors.

The Departmental Committee are in favour of extending priority to the full amount of the compensation due.

The final point we need consider here is the position of a worker who has been injured apparently through some negligence on his employer's part, so that on proof of negligence the worker can get legal damages against his employer, either at Common Law or under the Employers' Liability Act, while he has also a claim under the Workman Compensation Act, 1906, which is independent of negligence. It would obviously be unfair to allow the injured workman to have both damages and compensation for the same injury. If the worker decides to accept compensation under the Act of 1906, then quite fairly he is held to have waived

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the question of negligence, and after asserting his rights under the Act of 1906 he cannot change his mind and claim damages for negligence. On the other hand, if the workman thinks he can prove negligence he is entitled to make his claim and if successful he gets his damages, which will generally be more favourable to him than the scale of compensation under the Act of 1906. But whether the damages awarded exceed or do not exceed the compensation, he has made the employer pay once, and that is all he can do. On the other hand, if the workman attempts to prove negligence, but fails, then the employer has not paid at all, and there is no reason why he should be let off his liability under the Act of 1906. The Act accordingly provides as follows—‘If within the time in this Act limited for taking proceedings an action is brought to recover damages independently of this Act for injury caused by any accident, and it is determined in such action that the injury is one for which the employer is not liable in such action, but that he would have been liable to pay compensation under the provisions of this Act, the action shall be dismissed, but the Court in which the action is tried shall, if the plaintiff so choose, proceed to assess such compensation, but may deduct from such compensation all or part of the costs which, in its judgment, have been caused by the plaintiff bringing his action instead of proceeding under this Act.’

At first blush it might be thought that this provision might encourage injured workmen to bring actions for negligence on somewhat slender evidence, but it must be borne in mind that the workman has, while awaiting the trial of his action, to maintain himself for many weeks without any allowance from his employer, and has to find money for Court fees and other expenses, and that the pressure of circumstances tends to make a workman prefer the immediate certainties of compensation to the deferred, but possibly greater, benefit of the action at law. Statistics prove that actions under the Employers’ Liability Act dropped by roughly three-fourths between 1897, when the first Workman’s Compensation Act was passed, and 1913, and are still diminishing.

There is another source of compensation for injured workpeople which must be mentioned, though it is not of very great practical importance.

Under the Factory and Workshop Act, 1901, the Coal Mines Act, 1911, and the Metalliferous Mines Act, 1872, where a fine has been imposed for an offence which has occasioned loss of life or personal injury, the Home Secretary may (if he thinks fit) direct such fine to be paid to or distributed among the persons

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injured, and the relatives of any persons whose death may have been occasioned by the offence.

As the maximum fine under the Factory Act is £100, and under the Mines Acts is £20, there is no great sum available, and as the breach of the statutory duty is a ground for Common Law proceedings, the occasions on which this power is worth exercising are inconsiderable.

CHAPTER III

NOTIFICATION OF ACCIDENTS

The notification of accidents seems a very dull matter, but it has a most important bearing on the development of safety regulations. The recent extension of notification to dangerous occurrences as well as to accidents is a further step in the utilisation of experience so as to diminish the likelihood of accidents in the future. After all, notification is an inadequate term for our subject as notification is only really useful as the prelude to inquiry and recommendations, and without such development is nothing more than a cog in the wheel of statistics which revolves annually but gets nowhere. The study of the enactments bearing on this subject is complicated by the fact that industry as a whole is not yet under one Government Department, and that General Acts and Acts for special classes of industries stand side by side. It will probably be simplest if we take these Acts in chronological order.

The Metalliferous Mines Act, 1872, contains only a single section dealing with this part of our subject, but it is of some interest as showing the state of legislation fifty years ago. It is to the effect that where a death or deaths have been caused by accident in the mine, the coroner, when he holds his inquest, must give the district inspector of mines such notice as will give him a reasonable chance of attending the inquest. A section to this effect appears in almost all subsequent Acts and it will be sufficient for our purpose to give details of the corresponding section of the Factory and Workshop Act, 1901, when we come to the consideration of that Act.

The Notice of Accidents Act, 1894, in its present truncated condition, represents the present share of the Board of Trade in this industrial legislation. It now applies to the construction, use, working, or repair of any railway, tramroad, tramway, canal, bridge, tunnel, or other work authorised by any local or personal Act of Parliament. The reader will recollect that legislation, both as regards hours of working and regulations for the safety

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of railway workers, gives the administration of the law to the Board of Trade. The Act also applies to the use or working of any traction engine or other engine or machine worked by steam in the open air. This provision of the Act of 1894 seems to have been left to the Board of Trade because it was the easiest thing to do.

By the joint operation of the Act of 1894 and the Notice of Accidents Act, 1906, the Board of Trade is entitled to notice of any accident in the employments mentioned above which causes to any person employed therein either loss of life or such bodily injury as to cause him to be absent throughout at least one whole day from his ordinary work. The notice must be in writing and must specify the time and place of its occurrence, its probable cause, the name and residence of any person killed or injured, the work on which any such person was employed at the time of the accident, and in the case of an injury, the nature of the injury. The Board of Trade has power to direct the holding of a formal investigation of the accident and of its causes and circumstances. This formal investigation follows very closely similar investigation under section 22 of the Factory and Workshop Act, 1901, which is described later on. We have seen that the Board of Trade has moved very slowly in the matter of making safety regulations under the Railway Regulations Act. It is difficult to decide whether the reason for this is that the railway companies are so powerful, or that the Board of Trade Accident Department represents such an insignificant fraction of the multifarious duties of the Board of Trade. In either case the sluggishness of the Board of Trade does seem to compare unfavourably with the constant effort of the Home Office to diminish accidents in the rest of the field of industry.

The Factory and Workshop Act, 1901, contained a set of sections dealing with notice of accidents and subsequent inquiries, but in 1906 such part of the Act of 1901 as prescribed the accidents of which notice was to be given was repealed by the Notice of Accidents Act, 1906, and this latter Act further provided for the notification of certain 'dangerous occurrences' in mines and quarries as well as factories and workshops.

The combined effect of the Factory and Workshop Act, 1901, and the Notice of Accidents Act, 1906, as regards factories and workshops is as follows: Where any accident occurs in a factory or workshop which is either

- (a) An accident causing loss of life to a person employed in the factory or workshop; or

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- (b) an accident due to any machinery moved by mechanical power, or to molten metal, hot liquid, explosion, escape of gas or steam, or to electricity, and so disabling any person employed in the factory or workshop as to cause him to be absent throughout at least one whole day from his ordinary work ; or
- (c) an accident due to any other special cause which the Home Secretary may specify by Order, and causing such disablement as aforesaid ; or
- (d) an accident disabling for more than seven days a person employed in the factory or workshop from working at his ordinary work,

written notice of the accident with prescribed particulars must forthwith be sent to the inspector of the district.

Accidents coming within clauses (a) and (b) above must also be reported to the certifying surgeon of the district.

Dangerous occurrences—that is, explosions, fires, collapse of buildings, accidents to machinery or plant, or other-occurrences in a factory or workshop, which give rise to the risk of serious injury to those persons employed, whether personal injury or disablement is caused or not—are to be reported in the same way as accidents to the inspector of the district, if the Home Secretary makes an Order to that effect. The existing Order as to dangerous occurrences (*S.R. and O.*, 1906, No. 933) covers the following cases ; (a) bursting of a revolving vessel, wheel, emery wheel, or grindstone moved by mechanical power, (b) breaking of a rope, chain, or other appliance used in raising or lowering persons or goods by aid of mechanical power, and (c) fire affecting any room in which persons are employed and causing complete suspension of ordinary work therein for not less than twenty-four hours.

It should be noticed that the Factory and Workshop Act, 1901, is specially applied for certain purposes, which include the rules as to notification of accidents, etc., to docks, buildings under construction and large buildings generally, and private railways. The exact limits of this application are a matter of somewhat complicated wording, which will be found in *Industrial Law*, pp. 208-210.

The Factory and Workshop Act, 1901, provided by sections 20-22 that the notice of accident should be followed up in manner following.

Under section 20, where a certifying surgeon received the required notice of an accident he has to proceed with the least possible delay to the factory or workshop and make a full inves-

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tigation as to the nature and cause of the death or injury caused by the accident, and send a report to the inspector within the next twenty-four hours.

This regulation has been considerably modified by section 8 of the Police, Factories, etc. (Miscellaneous) Act, 1916.

That section abolishes the general duty of the certifying surgeon to investigate accidents as distinguished from industrial diseases, but it is still to be the duty of the certifying surgeon to investigate and report upon cases of injury caused by exposure to gas, fumes, or other noxious substances, or due to any other special cause specified in instructions of the Home Secretary as requiring investigation. The Home Secretary must issue instructions defining the causes of injury to which this provision is to apply, and requiring the inspector of the district to refer to the certifying surgeon all such cases reported to him.

The reason for this change is obvious. The certifying surgeon is not an engineer, and his opinion on the causes of accidents due to mechanical defects has no special value.

Under section 21, where death has occurred by accident in a factory or workshop (other than a men's workshop) the coroner must forthwith advise the district inspector of the time and place of holding the inquest. If the accident has occasioned the death of more than one person, then, unless an inspector or some person on behalf of the Home Secretary is present to watch the proceedings, the coroner must adjourn the inquest, and must at least four days before holding an adjourned inquest send the inspector notice in writing of the time and place of the adjourned inquest. If the accident has only occasioned the death of one person, and the coroner's notice has been sent at such time as to reach the inspector not less than twenty-four hours before the time of holding the inquest, it shall not be imperative to adjourn the inquest if the majority of the jury think it unnecessary. The following people may also attend the inquest, either personally or by counsel, solicitor or agent, and may examine any witness—namely, (a) any relative of the deceased, (b) any inspector, (c) the occupier of the factory or workshop where the accident occurred, and (d) any person appointed by the order in writing of the majority of the work-people employed in such factory or workshop.

Under section 22, if the accident is of sufficient importance, the Home Secretary may direct the holding of a formal investigation as to any accident occurring in a factory or workshop, and its causes and circumstances. The investigation must be

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made by a competent person, who may be assisted by an assessor or assessors possessing legal or special knowledge. The Court thus constituted meets in public in such manner and under such conditions as the Court may think most effectual for ascertaining the causes and circumstances of the accident and enabling the Court to make its report. It has the necessary powers for compelling persons to give evidence. The Court must make a report to the Home Secretary, stating the causes of the accident and its circumstances and adding such observations as it thinks right to make. The Home Secretary has the right to publish the reports of inspectors and investigating Courts.

The number of fatal accidents reported to certifying surgeons keeps fairly steady. Taking the years 1903, 1908, 1913, and 1919, the figures were, 1047, 1042, 1309 and 1385. The Act of 1906 increased the classes of non-fatal accidents which it was necessary to report to the certifying surgeon and the figures accordingly show an increase. In the same years, as mentioned above, the inspectors had notice of 62,091, 80,253, 119,982 and 126,023 accidents. Notices of dangerous occurrences under the Act of 1906 were 3079 in 1913, and 1631, in 1919.

The obligations of employers to report accidents do not seem to be known as well as they should be, and the result is that it is difficult to tell whether any apparent increase or decrease in accidents reported is due to an increase or decrease in the accidents or in the reporting.

The perusal of any Annual Report of the Chief Inspector of Factories will afford abundant evidence of the thought which inspectors give to the preventive side of their work.

A few passages from the Report for 1913 are here collected. 'Mr. J. S. Taylor has been engaged on an extensive inquiry dealing with the prevention of accidents through fracture of chains, hooks, shackles and similar lifting gear used in premises under the Act,' and then a page of the results is given.

'Mr. Wilson (Glasgow), who has given particular attention to this class of machinery (i.e. cranes), had forwarded the following important report dealing with crane and winch accidents, with the precautions necessary for their prevention,' and a most instructive report then follows.

The information acquired by inspectors is also made the basis of conferences on the best mode of preventing accidents in special trades. Thus, early in 1913 the last of a series of meetings between representatives of the Factory Department and associations of employers and operatives in the ironfounding trades was held

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at which safety precautions were discussed and a report of the proceedings has since been published.

Much attention was also given to explosion of dust, gas, etc. Not only was British experience utilised, but 'in consequence of the French explosion at Tourcoing, all the known paper tube works in this country have been visited by Mr. Jackson and the Dangerous Trades Inspector, and instructions have been issued to remedy faulty conditions as regards dust accumulation noted in some of these. The occupiers were generally alive to the dangers, owing to the circulation of translations of the Report by the French authorities.'

Again, 'Mr. Davis (Kent) draws attention to a danger found to exist in the water gas plants of a town gas works, which gave rise to an explosion attended with fatal results. The danger is due to the fact that a rise of pressure above normal on the generator side will cause a rush of gas into the blast ducts when the blast valve is opened, forming an explosive mixture which may be ignited by the hot generator. Attention is now being given to this point by gas plant makers, and improvements have been made in the means for preventing such occurrences; several new plants, fitted with safety appliances, have been seen.' In reporting an explosion at the Milford Haven gas works the writer of the report says, 'the lesson provided by previous serious gas explosions at Coventry, Birmingham, and elsewhere had not been learnt, but proper safety lamps will be used in future.'

Instances might be multiplied, but enough has probably been said to make it quite clear that the notification of accidents to factory inspectors is a very live matter, and that the lessons thus provided are passed on by the inspectors to the occupiers of factories and workshops, sometimes with success and sometimes unfortunately without success. What the reports say about the provision of automatic appliances on lifts or hoists applies no doubt to many other matters. 'Inspectors are continually pressing for their further adoption, and not without some considerable measure of success.'

The estimate that between 25 and 30 per cent. of all industrial accidents are preventable if all practicable means are taken is of course a guess at an average figure for the whole of industry. It would seem that the figures for specific industries might vary a great deal. On p. 168 the Special Regulations for docks were set out, and it is interesting to note what a large proportion of reported accidents at docks happen, in spite of the observance of the regulations. Out of 1,757 accidents reported from the north side of

the Thames only sixteen were due to definite breaches of the code. Of the eighty-three accidents at the port of Goole none were due to breach of the regulations. In the Liverpool district 1918 dock accidents were reported, of which thirty-seven were fatal, and of the remainder 523 were sufficiently serious to be reported to the certifying surgeon. All cases which indicated either a breach of the code or an excessive spell of work were investigated, but only seventeen, including six fatalities, could be regarded as due to failure to observe the regulations. None of the 757 dock accidents in the Manchester district, or the 148 accidents in the Preston district were due to infringements of the code. The reports of dock accidents lend themselves to an interesting study of the relationship between fatigue and accidents, but the results do not seem conclusive enough to be made the basis of a compulsory shortening of hours, though they certainly suggest that a break should be made for meals at shorter intervals than are at present customary.

In the case of coal mines the Coal Mines Act, 1911, contains independent provisions for the notification of accidents and the section of the Act of 1906 which deals with dangerous occurrences is repeated in the Act of 1911.

Section 80 of the Coal Mines Act, 1911, requires that notification shall be made of accidents occurring in or about any coal mine, whether above or below ground, in three classes of cases, namely—

- (1) an accident causing loss of life to any person employed in or about the mine.
- (2) an accident causing any fracture of the head or of any limb, or any dislocation of a limb, or any other serious personal injury to any person employed in or about the mine; and
- (3) an accident caused by an explosion of gas, or coal dust, or any explosive, or by electricity, or by over-winding, or by any other such special cause as the Home Secretary specifies by Order, and causing any personal injury whatever to any person employed in or about the mine.

The notification must be sent to the inspector forthwith and must be in writing and contain certain prescribed particulars. In the case of an accident causing loss of life or serious personal injury, a notification must also be sent to the persons (if any) nominated by the persons employed at the mine for the purpose of receiving notice on their behalf.

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When the inspector gets the notification he will want to see the place in the mine where the accident happened, so far as possible in the same condition as it was when the accident happened or immediately after the accident happened. In order to secure this there is a provision in section 80 to the effect that where loss of life or serious personal injury has immediately resulted from an accident, the place where the accident occurred must be left as it was immediately after the accident until the expiration of at least three days after the sending of the notice, or until the visit of the place by an inspector, whichever first happens, unless compliance with this enactment would tend to increase or continue a danger or would impede the working of the mine.

Section 81 of the Act repeats the enactment set out on p. 232 as to dangerous occurrences. Section 82 enables the Home Secretary to direct an inspector to make a special report of any accident which has caused loss of life or personal injury to any person, and to publish any such report.

Section 83 enables the Home Secretary to direct the holding of a formal investigation of any accident and of its causes and circumstances with ancillary provisions on the same lines as in the Factory and Workshop Act, 1901.

Section 84 gives the inspector the right to notice of the inquest in the case of a fatal accident. It does not differ materially from the corresponding section of the Factory and Workshop Act, 1901, except that, if the inspector is not present at the inquest, and any evidence is given of any neglect as having caused or contributed to the accident, or of any defect in or about the mine appearing to the coroner or jury to require a remedy, then the coroner must send to the inspector of the division notice in writing of such neglect or defect. Further, the high degree of organisation in the mining industry has made it advisable to insert a provision extending the right to be present at the inquest and to examine witnesses to any person appointed in writing by any association of workmen to which the deceased at the time of his death belonged, or by any association of employers of which the mine owner is a member, or by any association to which any of the workmen employed in the mine belongs.

Under the terms of the Workmen's Compensation Act, 1906, section 12, every employer in any industry to which the Home Secretary may direct that this section is to apply must annually send to him a correct return specifying the number of injuries in respect of which compensation has been paid by the employer

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under the Act, with such particulars as the Home Secretary may direct.

The existing regulations for these returns were made in October 1913, and the main divisions of industry furnish seven classes—namely :

- (i.) Mining.
- (ii.) Quarrying.
- (iii.) Working of railways (not being railways laid on public roads) authorised by special Act or by Orders or Certificates made in pursuance of General Acts and having statutory force, including stations and sidings connected with such railways and belonging to the owners thereof.
- (iv.) Any industry being carried on in any factory to which the Factory and Workshop Acts, 1901 and 1907, apply.
- (v.) The business of a harbour, dock, wharf, or quay.
- (vi.) Constructional work (including the construction of railways, tramways, canals, harbours or docks, bridges, tunnels, waterworks, sewers, roads, and other works of engineering, *but not including construction of buildings*).
- (vii.) Shipping (excluding sailing vessels in the sea-fishing service).

In the case of factory industries separate returns must be made in respect of ten different groups, viz., (a) cotton, (b) wool, worsted and shoddy, (c) other textiles, (d) wood, (e) metals extraction, including conversion, founding and galvanising, (f) marine, locomotive and motor engineering, and shipbuilding, (g) machines, appliances, conveyances and tools, (h) paper, printing, stationery, etc., (i) china and earthenware, and (j) miscellaneous.

In the case of railways, separate returns must be made in respect of clerical staff and other railway servants employed in the working of railways. In the case of other industries the clerical staff is to be excluded from the returns. An employer insured against his liabilities under the Act in a mutual indemnity or other insurance company, or belonging to an association of employers which deals on behalf of its members with claims for compensation, will not be required to make a separate return, if the company in which he is insured, or the association to which he belongs, is under an arrangement with the Home Office to make returns of the whole of the prescribed particulars on behalf of the employers insured or represented by it.

From these returns some valuable and interesting statistics

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have been compiled. As is to be expected, the amount of compensations per person employed per annum in each of the seven different classes varies a great deal. The figures for 1913 were as follows :—

Mines	...	...	...	24s. 3d.
Docks	...	...	...	24s. 0d.
Shipping	...	...	...	15s. 2d.
Constructional work	...	...	...	13s. 3d.
Quarries	...	...	...	10s. 2d.
Railways	...	...	...	8s. 5d.
Factories	...	...	...	5s. 0d.

The present writer, in commenting elsewhere on the 1913 figures, wrote: 'The cost of administration is apparently about 50 per cent. on the compensation paid, so that the total charge upon the seven industries was not less than £5,000,000.' It is hardly necessary to point out that 50 per cent. on compensation paid is a very high figure, being equivalent to $33\frac{1}{3}$ per cent on the premium income and it is not therefore surprising that the recent Committee on the working of the Act of 1906 should make certain recommendations on this. What they propose is that there should be State supervision of rates of premium of insurance companies with a view to the restriction of their expenses and profits in workmen's compensation business; that not more than 30 per cent. of the premium income be expended in profits, management expenses and payments for commission to agents, and that the maximum rates be approved or fixed by a Government official.

In return for this interference with the insurance companies, the Committee propose to make it an obligation on employers to insure themselves against workmen's compensation risks. Certain exceptions would be allowed, viz. the Crown, a local or other public authority, a statutory company, householders in respect of domestic servants, and under certain circumstances large firms who are 'self-insurers.'

SECTION V

THE STATE AND THE HEALTH OF THE WORKER

CHAPTER I HEALTH REGULATIONS

CHAPTER II COMPENSATION FOR INDUSTRIAL DISEASES

SECTION V

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CHAPTER I

HEALTH REGULATIONS

THE section which has already dealt with hours of labour and partial and total prohibitions might to a large extent have been included under this heading, and would have been so included but for one thing. The present day movement for shorter hours is the result of a desire, not merely for a less laborious working day with less risk of physical breakdown and accidents, but also for an ample leisure in which the working classes can enjoy life and attain to a wider existence than is afforded by the erstwhile round of working, feeding and sleeping. It is a movement with moral as well as physical ends. In fact in some industries it is possible to maintain the same output in a shorter working week, so that the working life remains equally laborious though the work is more concentrated and the leisure hours more extended. When once the subject of the limitation of hours was under consideration it seemed simpler to include all time conditions in the same section, but a very large proportion of the provisions in that section, especially those which apply to workers in dangerous industries, are purely and simply intended to preserve the health of the workers. It would not be difficult to establish a connection between minimum wage legislation and the question of health. We have seen that in our legislation Trade Boards are not tied down by statute to the consideration and granting of a 'living wage,' but the idea of a wage adequate to maintain the worker in continued health is never far away from the minds of the members of the Trade Boards and other wage-fixing bodies. This connection between health and hours of labour and wages is too obvious to need elaboration, and it is only referred to lest a hasty

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reader should assume that in this section he is being introduced to all that affects the health of the workers.

The sanitary condition of factories in general is secured by the following provisions of the Factory and Workshop Act, 1901.

(1) A factory must be kept in a cleanly state, and for that purpose all the inside walls of the rooms, and all the ceilings or tops of those rooms (whether the walls, ceilings or tops are plastered or not) and all the passages and staircases must be lime-washed once at least within every fourteen months. As an alternative they may be painted with oil or varnished once at least in every seven years, and washed with hot water and soap once at least within every fourteen months. . . .

(2) A factory must be kept free from effluvia arising from any drain, water closet, earth closet, privy, urinal, or other nuisance.

(3) A factory must not be so overcrowded while work is carried on therein as to be dangerous or injurious to the health of the persons employed therein. The standard adopted by the Act is the provision of not less than 250 cubic feet of space in each room to each person employed in the room during the ordinary hours of employment, and of 400 cubic feet of space to each person during overtime. There must be affixed in every factory a notice specifying the number of persons who may be lawfully employed in each room of the factory.

(4) A factory must be ventilated in such a manner as to render harmless, as far as practicable, all the gases, vapours, dust, or other impurities generated in the course of the manufacturing process or handicraft carried on therein that may be injurious to health.

The Home Secretary has power to except certain classes of factories from the provisions as to lime washing and washing if he considers they are not required for those classes. He has exercised these powers in the case of two groups of work places and also in the case of parts of factories which are used for special purposes or are specially constructed, but in every case only under certain conditions. Mess rooms, engine houses, fitting shops and sanitary conveniences are not to be excepted, and in return for exception elsewhere additional cubic space must be provided for the workers. These exceptions are as follows :—

If the occupier provides 500 cubic feet of space instead of the minimum 250 feet, then blast furnaces, iron mills, copper mills, stone, slate and marble works, unglazed brick and tile works, cement works, chemical works, gas works, flax scutch mills (employing only adult labour) and sugar factories are excepted.

If the occupier provides 2,500 cubic feet of space, then ship-

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building works, gun factories, engineering works, electric generating works, frame dressing-rooms of lace factories, and foundries (other than brass foundries) are excepted.

The exceptions in favour of parts of factories are conditional on the provision of 500 cubic feet of space per worker and relate to such parts as store-rooms, rooms with unglazed windows, tops of rooms which are at least twenty feet from the floor and tops of rooms in certain workplaces.

There is also a conditional extension of the limewashing period to twenty-six months instead of fourteen months in the case of rooms in which lace-making by machine is carried on.

The sanitary condition of *workshops and domestic factories* is mainly provided for by the terms of section 91 of the Public Health Act, 1875, but that section is extended by the Factory and Workshop Act, 1901, so as to make the provisions for sanitation in factories and in workshops practically identical except on two points. The first difference is that in the matter of the periodic lime washing or washing the owner or occupier can choose his own periods, subject to the right of the local authority¹ after the receipt of a certificate of their medical officer of health or inspector of nuisances, to give notice in writing requiring the owner or occupier of the workshop to limewash, cleanse or purify the same within a specified time.

The second difference is that the local authority is responsible for seeing that the sanitary condition of workshops is satisfactory, while the factory inspectors are responsible for the factories.

In local administration there is always the danger that the local employer will have some influence with the local authority which will make them willing to connive at breaches of the law. In the larger towns where the medical officer of health is an officer of high standing and where a pride is taken in civic administration, there is very little danger that the local authority will fail in its duty, but it has been found absolutely necessary for the Home Office to keep some hold on local authorities. There are two main enactments for this purpose. One enables the Home Secretary to supersede the local authority. If the Home Secretary is satisfied that the provisions of the Factory Act or of the law relating to public health in so far as it affects factories, workshops, and workplaces have not been carried out by any local authority he may by Order authorise an inspector to take during such period as may be mentioned in the Order such steps as may appear

¹ This term includes City and Town Councils, and Urban and Rural District Councils, acting as the local authority for public health purposes.

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necessary or proper for enforcing those provisions. It may be taken for granted that the mere threat of the Home Office to use these powers would be sufficient to bring a local authority to a sense of its duties.

The other enactment is much more restricted in scope. Where it appears to an inspector that any act, neglect, or default in relation to any drain, water closet, earth closet, privy, ash-pit, water supply, nuisance or other matter in a factory or workshop is punishable or remediable under the law relating to Public Health, but not under the Factory Act, he must give notice in writing thereof to the local sanitary authority, who must make such inquiry and take such action as seems to the authority proper for the purpose of enforcing the law, and must inform the inspector of the proceedings taken in consequence of the notice. If proceedings are not taken within one month, the inspector may take proceedings and recover from the local authority all such expenses in and about the proceedings as the inspector incurs and as are not recovered from any other person and have not been incurred in any unsuccessful proceedings.

In order that the local authority may be in a position to do its duty, it must know what workshops are within its district. The Act therefore imposes on every person who occupies a factory or workshop within one month of his beginning his occupation the duty of serving on the inspector a written notice containing the name of the factory or workshop, the place where it is situate, the address to which he desires his letters to be addressed, the nature of the work, the nature and amount of the moving power therein, and the name of the person or firm under which the business of the factory or workshop is to be carried on. These details are necessary, for without them the inspector cannot decide whether the workplace is a factory or workshop within the meaning of the Act, or whether it is a non-textile factory or a textile factory, and other points of classification. The point of immediate application is that the inspector first decides whether the workplace is a factory or workshop. If he decides that the workplace is a workshop, then he must forthwith forward the notice to the local authority of the district in which the workshop is situate. The local authority must keep a register of all workshops situate within their district.

During the year 1913 the inspectors on a total of about 120,000 factories and 150,000 workshops¹ served 12,154 contravention

¹ Factories are increasing and workshops decreasing. In 1919 there were 135,454 factories and 145,737 workshops.

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notices in the matter of limewashing on the occupiers of factories and sent 3,795 notices to local authorities of want of cleanliness in workshops. Overcrowding was almost negligible as for factories there were only 92 contravention notices and only 255 notices were served on local authorities. Ventilation to remove vapours; dust, etc., was a more important matter, the inspectors dealing with 2,794 cases of contravention and notifying the local authorities of 342 cases. It must not be gathered from these figures that the local authorities only act after receiving notices from the factory inspector. A local authority which has a high standard of sanitation is almost independent of the factory inspector. For instance, Birmingham had 4,948 registered workshops at the close of the year 1918. The inspections made by sanitary inspectors or inspectors of nuisances and other officials totalled 7,353, of which 5,928 were in the case of workshops, and the balance in the case of miscellaneous workplaces. Want of cleanliness was found in 1,270 instances, want of ventilation in four, overcrowding in two, and want of drainage of floors four. Only 206 notices were received from the factory inspectors as to workshops requiring attention by the local authority.

The four matters mentioned above do not cover the whole range of general sanitation, but they have to be considered separately on account of the different administrative treatment of factories and workshops in respect of them. We now come to certain requirements which are applicable to all factories and workshops other than men's workshops, and which are dealt with administratively by factory inspectors. Here again there are four distinct matters—viz., reasonable temperature, ventilation, drainage of floors, and sanitary conveniences.

As regards reasonable temperature, the obligation on the occupier is to take adequate measures for securing and maintaining this in each room in which any person is employed, but without interfering with the purity of the air. The practical difficulty of combining these two purposes is not a small one, and probably a good many workers are prepared to sacrifice the purity of the air in winter for greater warmth. In 1913 the number of contravention notices in this respect was 2,918, which is very little more than one per cent. of the total number of factories and workshops.

The obligations on the occupier with regard to general ventilation is to provide in every room sufficient means of ventilation and to maintain sufficient ventilation. Contraventions in factories are offences under the Act, but a workshop in which there is a contravention is a nuisance liable to be dealt with summarily

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under the law relating to public health. Contravention notices sent to factory occupiers in respect of ventilation numbered 2,207 in 1913, and the number of workshops notified as nuisances to local authorities was 379.

There is no fixed standard of ventilation laid down in the Factory Act itself, but the Home Secretary has power to prescribe by Special Order a standard of sufficient ventilation for any class of factories and workshops. This power has only been exercised in regard to cotton cloth factories, in which atmospheric humidity is artificially produced by steaming or other mechanical appliances, and in which special rules or regulations with respect to humidity are not for the time being in force. The standard fixed in this class of factories is such as to supply during working hours not less than 600 cubic feet of fresh air per hour for each person employed.

The Home Office has recently been giving special attention to ventilation of factories and workshops and during the current year a special pamphlet on the subject has been issued for official use.

The provision as to drainage of floors applies only to factories or workshops or parts thereof in which any process is carried on which renders the floor liable to be wet to such an extent that the wet is capable of being removed by drainage. In such a case adequate means must be provided for draining off the wet. Here again a workshop in which there is a contravention is technically 'a nuisance.'

The Act, supplemented by a Special Order, prescribes the extent to which sanitary conveniences are to be provided for the work-people.

The existing rules are as follows :

(1) In factories or workshops where females are employed or in attendance there must be one sanitary convenience for every twenty-five females. In factories or workshops where males are employed or in attendance there must be one sanitary convenience for every twenty-five males, provided that (a) in factories or workshops where the number of males employed or in attendance exceeds 100, and sufficient urinal accommodation is also provided, it shall be sufficient if there is one sanitary convenience for every twenty-five males up to the first 100 and one for every forty after ; (b) in factories or workshops where the number of males employed or in attendance exceeds 500, and the District Inspector of Factories certifies in writing that by means of a check system or otherwise, proper supervision and control in

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regard to the use of the conveniences are exercised by officers specially appointed for that purpose, it shall be sufficient if one sanitary convenience is provided for every sixty males, in addition to sufficient urinal accommodation. Any certificate given by an inspector shall be kept attached to the general register, and shall be liable at any time to be revoked by notice in writing from the inspector.

In calculating the number of conveniences required by this Order, any odd number of persons less than twenty-five, forty, or sixty, as the case may be, shall be reckoned as twenty-five, forty or sixty.

(2) Every sanitary convenience shall be kept in a cleanly state, shall be sufficiently ventilated and lighted, and shall not communicate with any workroom, except through the open air or through an intervening ventilated space, provided that in workrooms in use prior to January 1, 1903, and mechanically ventilated in such manner that air cannot be drawn into the workroom through the sanitary convenience, an intervening ventilated space shall not be required.

(3) Every sanitary convenience shall be under cover and so partitioned off as to secure privacy, and if for the use of females shall have a proper door and fastenings.

(4) The sanitary conveniences in a factory or workshop shall be so arranged and maintained as to be conveniently accessible to all persons employed therein at all times during their employment.

(5) Where persons of both sexes are employed, the conveniences for each sex shall be so placed or so screened that the interior shall not be visible, even when the door of any convenience is open, from any place where persons of the other sex have to work or pass ; and, if the conveniences for one sex adjoin those for the other sex the approaches shall be separate.

These requirements do not apply to the administrative County of London, or any place where section 22 of the Public Health Acts Amendment Act, 1890, is in force. In such districts the obligation is as follows:—Every building used as a workshop or manufactory or where persons are employed or intended to be employed in any trade or business, must be provided with sufficient and suitable accommodation in the way of sanitary conveniences, having regard to the number of persons employed in or in attendance at such buildings, and also where persons of both sexes are employed, or intended to be employed or in attendance, with proper separate accommodation for persons of each sex.

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The urban authority for the district on the report of their surveyor may serve written notice on the occupier of their requirements under this section and in default of compliance with such requirements may take proceedings.

For the ordinary factory or workshop the foregoing constitutes a simple and on the whole an effective code. Before we pass on to the special treatment of dangerous and unhealthy industries in general, the bulk of which is contained in Special Regulations made by the Home Secretary, we must notice three cases in which there is special and direct legislation—namely, (a) cotton cloth and other humid factories, (b) bakehouses, and (c) laundries.

As regards cotton cloth and other humid factories, the position is as follows:—For a long time they have been specifically dealt with in the various Factory Acts, and the relevant parts of the Factory and Workshop Act, 1901, were sections 90-96 and the fourth schedule to the Act. These sections deal with the following matters—temperature and humidity in cotton cloth factories, power to alter table of humidity, employment of thermometers, notices and inspections where humidity is artificially produced, regulations for the protection of health, penalties for non-compliance, application of these provisions to other humid factories. In November, 1907, the Home Secretary appointed a committee to inquire into the question of humidity and ventilation in cotton cloth factories, and in January, 1911, this committee presented its second report. The Factory and Workshop (Cotton Cloth Factories) Act, 1911, was passed to enable the Home Secretary to give effect to the recommendations in this report by Regulations which are to take effect as it embodied in Part V. of the Act of 1901 and in substitution wholly or partially for sections 90, 91, 92, 94 and the fourth schedule. The current regulations are contained in *S.R. and O.*, 1911, No. 1259, and a summary of these will be found in *Industrial Law*, pp. 201-2, and the Regulations in full at pp. 514-9.

The Special Orders for bakehouses are to be found in sections 97 to 102 of the Factory and Workshop Act, 1901. There are certain special sanitary regulations which are mainly for the protection of the public who consume the bread. Further the provisions for limewashing, painting and washing are much more stringent, and in general the limewashing or washing must be done once in six months instead of once in fourteen months.

In the case of laundries, the Factory and Workshop Act, 1907, section 3, contains the following provisions for the health of the workers:—

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(a) If mechanical power is used a fan or other efficient means must be provided, maintained and used for regulating the temperature in every ironing room, and for carrying away the steam in every washhouse.

(b) All stoves for heating irons must be sufficiently separated from any ironing room or ironing table, and gas irons emitting any noxious fumes must not be used.

(c) The floors must be kept in good condition and drained in such manner as will allow the water to flow off freely.

We may now pass to the general consideration of dangerous and unhealthy industries. For nearly sixty years attention has been progressively directed to these industries, and elaborate provisions have been gradually brought into operation. The bulk of the Regulations now in force have been enacted as a consequence of the power given by the Factory and Workshop Act, 1891, to the Home Secretary to draw up special rules for these industries. So far as actual prohibitions of labour are concerned this matter has already been dealt with.

The older provisions are to be found in certain sections of the Factory and Workshop Act, 1901. One of the first objects of legislation against specific evils such as the chief cases of industrial poisoning, is to insure early notice of the existence of the poisoning. Normally neither the employer nor the workman will be able to detect these diseases in their early stages, and the first line of protection is occupied by medical men. Under section 73 of the Act of 1901, every medical practitioner attending on or called in to visit a patient whom he believes to be suffering from lead, phosphorous, arsenical, or mercurial poisoning, or anthrax contracted in any factory or workshop, must send to the Chief Inspector of Factories at the Home Office in Whitehall, a notice stating the name and full postal address of the patient and the disease from which the patient is suffering, and in return for this the medical practitioner is entitled to a fee of half-a-crown. If a medical practitioner when required by this section to send a notice, fails forthwith to send it, he is liable to a fine of forty shillings. But though the employer cannot be expected to diagnose these poisonings, yet from time to time he may actually know of their occurrence, so the section goes on to enact that written notice of every such case occurring in a factory or workshop shall forthwith be sent to the inspector and to the certifying surgeon for the district and the provisions of this Act with respect to accidents shall apply to any such case. In the year 1913, there were 625 reported cases of fresh attacks of these poisonings, of

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which 395 were notified by medical practitioners and 499 by factory or workshop occupiers. Painters and plumbers are particularly liable to lead poisoning and many of them are not employed in either factories or workshops. We shall have something more to say about these cases when we consider the law as to compensation for industrial diseases under the Workmen's Compensation Act, 1906. To give some idea of the dangerous character of their trade it may be mentioned here that 291 cases of lead poisoning were reported in 1913 among house painters and plumbers not employed under the Factory and Workshop Act, 1901.

Next in order (section 74) comes a provision for special ventilation by fan in certain factories and workshops. If in a factory or workshop where grinding, glazing or polishing on a wheel, or any process is carried on by which dust, or any gas vapour or other impurity is generated and inhaled by the workers to an injurious extent, it appears to an inspector that such inhalation could be to a great extent prevented by the use of a fan or other mechanical means, the inspector may direct that a fan or other mechanical means of a proper construction for preventing such inhalation be provided within a reasonable time. If the same is not provided, maintained, and used the factory or workshop shall be deemed not to be kept in conformity with the Act.

Then comes a provision (section 75) for special precautions against industrial poisoning. In every factory or workshop where lead, arsenic, or any other poisonous substance is used, suitable washing conveniences must be provided for the use of the persons employed in any department where such substances are used. It will be noted that there is no compulsion on the workers to use the washing apparatus. It will be seen when we come to consider Special Regulations of the same nature that this defect has been remedied.

Further, in any factory or workshop where lead, arsenic or other poisonous substance is so used as to give rise to dust or fumes, a person shall not be allowed to take a meal or to remain during the time allowed to him for meals, in any room in which any such substance is used, and suitable provision shall be made for enabling the persons employed in such room to take their meals elsewhere in the factory or workshop. A factory or workshop in which either of these requirements is contravened is to be deemed not to be kept in conformity with the Act. Sections 74 and 75 do not apply to men's workshops.

In the case of women and young persons, section 78 adds further

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work-places to those in which the taking of meals, etc., is prohibited. The Home Secretary is empowered by this section to add to the list of industries in which prohibition is applicable. In the following list section A gives the effect of the Act itself and section B, C and D give the effect of a Special Order made in 1898.

In the following work-places a woman or young person is not allowed to take a meal or to remain during the time allowed for meals :—

(A) (i.) In the case of glass works, in any part in which the materials are mixed.

(ii.) In the case of glass works where flint glass is made, in any part in which the work of grinding, cutting, or polishing is carried on, and

(iii.) In the case of lucifer-match works, in any part in which any manufacturing process or handicraft (except that of cutting wood) is usually carried on and

(iv.) In the case of earthenware works, in any part known or used as dippers' house, dippers' drying-room, or china scouring-room.

(B) The parts of textile factories in which the process of gassing is carried on.

(C) The parts of print works, bleaching works, and dyeing works in which the process of singeing is carried on.

(D) The parts of factories or workshops in which any of the following processes are carried on :—

Sorting or dusting wool or hair.

Sorting, dusting, or grinding rags.

Fur-pulling.

Grinding, glazing, or polishing on a wheel.

Brass-casting, typefoundry.

Dipping metal in aquafortis or other acid solution.

Metal-bronzing.

Majolica painting on earthenware.

Cleaning and repairing catgut.

Cutting, turning or polishing bone, ivory, pearlshell or snailshell.

Manufacturing chemicals or artificial manures.

Manufacturing white lead.

Lithographic printing.

Playing-card making.

Fancy-box making.

Paper-staining.

} If and when dry powder or dust is
used.

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Almanack making.	} If and when dry powder or dust is used.
Artificial flower making.	
Paper colouring and enamelling.	
Colour making.	

Notice of this prohibition must be affixed in every factory or workshop to which it applies.

The prohibition just dealt with is a good illustration of the extent to which Orders of the Home Office have extended the actual scope of the Act. This is a very relevant matter on the whole question of dangerous and unhealthy industries. Out of a total of 274,569 factories and workshops known to the Home Office in 1913, no fewer than 58,528 were working under regulations or Special Rules.¹

The authority under which Regulations are made for individual industries of a dangerous or unhealthy character is contained in section 79 of the Act of 1901. As has already been explained, where the Home Secretary is satisfied that any manufacture, machinery, plant, process, or description of manual labour used in factories or workshops is (a) dangerous or injurious to health, or (b) dangerous to life and limb, it may be certified by the Home Secretary to be dangerous, and thereupon he may make such regulations as appear to him to be reasonable, practicable and to meet the necessity of the case. Existing regulations protecting life and limb have already been dealt with, but we have still to consider the regulations for protecting the health of the workers. Omitting the industries which are specially regulated for purposes of safety only, we have the following industries or processes which are regulated as dangerous to health:—

Aerated water, bottling of, etc.
Arsenic, extraction of.
Brass, casting of.
Bricks, glazing with use of lead.
Bronzing with dry metallic powders in letterpress printing.
Camel hair, sorting, etc.
Chemical works, processes in.
Chromate or bichromate of potassium or sodium, manufacture of.
Earthenware and china, manufacture and decoration of.
Electric accumulators, manufacture of.
Enamelling, vitreous, of metal or glass.
File cutting by hand.
Flax and tow, spinning and weaving.

¹ By 1919 these figures had grown to 77,957.

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Goat hair, sorting, etc.
Grinding of metals.
Hemp and jute, spinning and weaving of, etc.
Hides and skins (foreign).
Horsehair from China, Siberia, or Russia, use of.
India-rubber, etc., manufacture of.
Lead, manufacture of carbonate, acetate, sulphate, or nitrate of.
Lead, smelting of materials containing ; manufacture of red or orange lead and flaked lithage.
Lead white, manufacture of.
Nitro- and amido- derivatives of benzene, manufacture of, etc.
Paints and colours, manufacture of.
Patent fuel (briquettes), manufacture with addition of pitch.
Pottery, manufacture and decoration of.
Tinning of metal articles.
Transfers, making in china and earthenware works.
Wool-sorting, etc.
Yarn dyed by means of a lead compound, heading of.

The devices for protecting the health of the workers are really not very numerous, and a good idea of the very voluminous regulations¹ can be obtained by giving a short description of these devices and stating to which of the industries they are applied.

The device of extra space for the workers and keeping a good distance between workers is suitable for industries involving a poisonous or otherwise harmful dust or noxious fumes. The following provisions come under this heading:—In a room used for file cutting by hand (which involves lead dust) there must be 350 cubic feet of air space for each stock at which the cutting is done, and the stocks are to be a prescribed distance apart.

In the manufacture of electric accumulators, in every room in which casting, pasting or lead burning is carried on, there must be at least 500 cubic feet of air space and thirty-six square feet of floor space for each person employed.

In the sorting of wool, etc., (where there is a risk of anthrax), the room used must allow an air space of at least 1,000 cubic feet for each person employed in it.

Certain regulations have been made for brass casting shops, and exemption is granted if the following alternative is adopted. The Regulations are not to apply to a sand casting shop which has an air space equivalent to 2,500 cubic feet for each of the persons employed, nor to any other casting shop having an air space equivalent to 3,500 cubic feet for each of the persons employed,

¹ For details see *Industrial Law*, Appendix, pp. 416-512.

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provided that provision is made for the egress of the fumes during casting by inlets below and outlets above of adequate size.

In workplaces where the vitreous enamelling of metal or glass is carried on every room in which any enamelling process is carried on must contain at least 500 cubic feet of air space and thirty-six square feet of floor space for each person employed therein, and must be efficiently lighted, having for this purpose efficient means of lighting, both natural and artificial. In the same industry, if firing is done in a room not specially set apart for the purpose, no person may be employed in any other process within twenty feet from the furnace.

Special floors are a device for ensuring two different ends. In dusty operations they enable the dust to be easily removed, and in wet operations they enable the floors to be effectively drained.

The following are examples :—

Every room used for file cutting by hand must have a substantial floor of washable material. The danger here is lead dust.

In the manufacture of electric accumulators the floors of the rooms in which manipulations of dry compounds of lead or pasting is carried on must be of cement or similar impervious material and must be kept constantly moist while work is being done.

In the flax and tow industry the floor of every wet spinning room must be kept in sound condition and drained so as to prevent retention or accumulation of water.

In the vitreous enamelling of metal or glass every room in which any enamelling process is carried on must have floors which are well and closely laid and maintained in good condition.

In rooms in which is carried on any wet grinding of metals, dry grinding, or the racing of grindstones, or any process scheduled in the Regulations, the floor and belt races must be firm and capable of being cleansed, and in the case of new buildings or extensions must be water tight.

In workplaces where the smelting of materials containing lead or the manufacture of red or orange lead or of flaked litharge is carried on, the floor other than sand beds of any place where a lead process is carried on so as to give rise to dust or fumes must be maintained in good condition.

Special ventilation is a general device.

Efficient inlet and outlet ventilators must be provided in rooms used for file cutting by hand.

In the manufacture of electric accumulators every room used

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for casting, pasting or lead burning must be capable of thorough ventilation and must be provided with windows made to open.

In factories and workshops where flax and tow are submitted to various processes a limit is put on the amount of carbonic acid in the air. If gas or oil is being used for lighting, the proportion of carbonic acid must not exceed twenty volumes to 1,000 volumes of air, while if electric light is being used it must not exceed twelve volumes, while at other times it must not exceed nine volumes.

There is a similar provision for workplaces where hemp and tow are being dealt with. Efficient exhaust and inlet ventilation must be provided in the rooms where the dust producing operations of roughing, sorting or handhackling, etc., of flax and tow are carried on. There is a similar provision for hemp and tow processes, though some of the processes have different names.

In the lead colour industry the lead processes must either be carried on with an efficient exhaust draught and air guide for carrying away the dust or steam, or in the case of processes giving rise to dust, in an apparatus so closed as to prevent the escape of dust.

There must also be an efficient exhaust draught to carry away dust where yarn dyed by means of a lead compound is being headed.

In the case of brass casting there must in general be an efficient exhaust draught operating in one of the modes indicated in the Regulations. There must be efficient arrangements to prevent the fumes from entering any other room in the factory in which work is carried on. There must be free openings to the outside air so placed as not to interfere with the efficiency of the exhaust draught.

In the vitreous enamelling of metal or glass no enamelling process giving rise to dust or spray may be done, save either (a) under conditions which secure the absence of dust and spray, or (b) with an efficient exhaust so arranged as to intercept the dust or spray and prevent it diffusing into the air of the room. In the same industry such arrangements must be made as shall effectually prevent gases generated in the muffle furnaces from entering the workrooms.

In the manufacture of explosives from dinitro benzol or dinitro-toluol, vessels containing certain substances must either be specially constructed so as to remove fumes safely, or in every room in which fumes from such substances are evolved and are not so removed adequate through ventilation must be maintained by a fan or other efficient means. Every drying stove must

be efficiently ventilated to the outside air in such manner that hot air from the stove shall not be drawn into any workroom. No person may enter a stove to remove the contents until a free current of air has been passed through it.

Certain substances must not be crushed, ground or mixed in the crystalline condition, and no cartridge filling must be done, except with an efficient exhaust draught.

In factories and workshops where tinning of metal hollow-ware, iron drums, and harness furniture takes place, tinning must not be carried on except under an efficient draught. The skimmings from the dipping bath must not be removed from under the efficient draught until they have been placed in a covered receptacle.

In the dry grinding of metals, where the dust, though not poisonous, may give rise to lung trouble, no dry grinding and no finishing process (as scheduled) may be done without the use of adequate appliances for the interception of the dust, as near as possible to its point of origin, and for its removal and disposal, so that it does not enter any occupied room, and in general, adequate appliances must include a hood for the machine, an air-tight duct to carry away the dust, and a fan.

In the case of the smelting of materials containing lead and in the manufacture of red or orange lead or flaked litharge, no lead material, other than ingots of metal, must be temporarily deposited on a floor, or moved to a furnace unless it is either (a) damp, (b) under an efficient exhaust draught, or (c) so enclosed as to prevent the escape of dust into the air of any place in which work is carried on. Further, certain processes must only be carried on with an efficient exhaust draught, and other processes must be so carried on as to prevent escape of gas, vapour, fumes, or dust into any place in which work is carried on. No person is to be allowed to enter any furnace, melting-pot, retort, condensing chamber or flue until it has been ventilated. No person is to be allowed to remain in any flue (unless damp) or condensing chamber for more than three hours without an interval of at least half-an-hour.

In bronzing in connection with printing, bronzing by machine must not be done except under such conditions as to prevent as far as practicable the escape of dust into the air of any occupied room, and hand bronzing must be done under similar conditions or with an efficient exhaust draught.

In the manufacture of electric accumulators, melting pots with hoods and shafts to remove the fumes and hot air from the

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workrooms must be used, and in manipulating dry compounds of lead either closed apparatus must be used or proper exhaust draughts arranged.

In sorting, willeying, washing and combing and carding wool, goat hair and camel hair and their incidental processes the workers run a risk of getting anthrax, accordingly special opening screens and sorting boards with mechanical exhaust draughts must be used. Similar provisions apply to the opening and sorting of horsehair from China, Siberia and Russia.

In the case of horsehair from China, Siberia or Russia every willowing and dust extracting machine must be covered over and provided with efficient exhaust draught so arranged as to carry the dust away from the worker.

Again, in factories in which East Indian wool is used, no such wool or hair may be treated in any dust extracting machine unless such machine is covered over and the cover connected with an exhaust fan so arranged as to discharge the dust into a furnace or into an intercepting chamber.

The washing of hands, or even more elaborate cleansing extending to baths in some cases, is a recognised precaution in many unhealthy industries. On the one side there is an obligation on the employer to provide adequate facilities for washing, and in certain cases to allow part of the working hours to be used for washing, and on the other side there is an obligation on the worker to wash themselves to the prescribed extent. The latest form of regulation provides for a bath register.

The standard facilities stipulated for in all recent orders are a lavatory, under cover, with a sufficient supply of clean towels, renewed daily, and of soap and nail brushes, and with either

(a) a trough with a smooth impervious surface, fitted with a waste pipe without plug, and of such length as to allow at least two feet for every five persons and having a constant supply of warm water from taps or jets above the trough at intervals of not more than two feet or

(b) at least one lavatory basin for every five such persons, fitted with a waste pipe and plug, or placed in a trough having a waste pipe, and having either a constant supply of hot and cold water or warm water laid on, or (if a constant supply of heated water be not reasonably practicable) a constant supply of cold water laid on and a supply of hot water always at hand when required for use by persons employed.

Thus sufficient and suitable washing conveniences must be provided and maintained for the use of hand file cutters.

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In the manufacture of electric accumulators the occupier must provide and maintain for the use of persons employed in lead processes the standard lavatory, which must be kept thoroughly cleansed. *Before each meal and before the end of the day's work at least ten minutes, in addition to the regular meal times, must be allowed for washing* to each person who has been employed in the manipulation of dry compounds of lead or in pasting. For this latter class of workmen *there must also be sufficient bath accommodation* with hot and cold water laid on and a sufficient supply of soap and towels (unless the use of local public baths is specially sanctioned as an alternative). No person employed in a lead process must leave the premises or partake of meals without previously and carefully cleansing and washing the hands. Every person for whom bath accommodation is provided must take a bath at least once a week.

Washing accommodation must be provided for all persons employed on unwashed wool, etc., and such persons must wash their hands before partaking of food or leaving the premises.

In the manufacture of lead colours the usual lavatory must be provided and all persons employed in lead processes or at the roller mills must carefully clean and wash their hands before leaving the premises or partaking of food.

Similar provisions apply in the case of persons employed in the heading of yarn dyed by means of a lead compound.

In the case of persons employed on horsehair from China, Siberia or Russia which has not undergone disinfection the standard lavatory accommodation must be provided, and every such person must wash his hands and clean his nails before partaking of food or leaving the premises.

In brass casting shops, the standard lavatory accommodation must be provided for the use of all persons employed, and no person employed must leave the premises or partake of food without carefully washing his hands.

In the case of persons employed in the vitreous enamelling of metal or glass, the standard lavatory accommodation must be provided for all persons and they must carefully clean their hands before partaking of any food or leaving the premises. Similar provisions apply in the case of persons employed in the manufacture of explosives with dinitro-benzol or dinitro-toluol, and in the case of persons employed on certain scheduled processes there must be bath accommodation on the lines laid down in the Order in connection with the making of electric accumulators. Besides the weekly bath the operatives must also take a bath

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when certain scheduled substances have been spilt on the clothing so as to wet the skin.

In factories and workshops where tinning is carried on the standard lavatory accommodation must be provided, and every person employed in tinning, mounting, denting or scouring must wash his hands before partaking of food or leaving the premises.

In the case of the smelting of material containing lead and the manufacture of red or orange lead, or flaked litharge, the standard lavatory accommodation must be provided for all persons employed in any lead process, together with either bath accommodation or such washing apparatus as will allow of a warm douche for the face, neck and arms. The obligation on the person employed is correspondingly increased, and every person employed in any lead process, or in any place where any lead process is being carried on, must before partaking of food wash the face and hands, and before leaving the premises wash the face, neck and arms.

The usual provisions for lavatory accommodation and the washing of face and hands before partaking of food or leaving the premises apply to persons employed in bronzing in connection with printing.

In the case of the manufacture of chromate or bichromate of potassium or sodium there are the usual provisions for lavatory accommodation for the use of all persons employed in any chrome process, and in addition there must be provided for the use of all persons employed in the crystal department and in packing sufficient and suitable bath accommodation. Every person employed in grinding the raw materials or in the crystal department or in packing must before leaving the premises thoroughly wash his face and hands. Every person employed in the crystal department or in packing must take a bath at the factory at least once a week, and must then sign his name in the bath register with the date.

We may group together as necessary precautions in certain cases (a) *extra cleaning of the workplaces*, (b) actual disinfection of the material used, and (c) the damping of dust. Rooms used for hand file cutting must be limewashed once in each half-year, and the floor and the benches must be cleansed once a week. The cement floors of the rooms in which manipulation of dry compounds of lead or frosting is carried on in the manufacture of electric accumulators must be washed with a hose pipe daily. The floors and benches of each workroom used in this industry must be thoroughly cleansed daily, at a time when no other work

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is being carried on in the room. In the case of rooms used for the opening, sorting or willowing of wool, etc., the floors must be thoroughly sprinkled daily with a disinfectant solution after work has ceased for the day and must be swept immediately after cleansing. The walls and ceilings must be limewashed at least once a year and cleansed at least once in every six months.

In the case of horsehair from China, Siberia or Russia the material must not be subjected to any manipulation other than opening or sorting until it has undergone disinfection.

In the vitreous enamelling of metal or glass the floors and benches of every room in which any enamelling process is carried on must be cleansed daily and kept free of collection of dust.

In factories and workshops where tinning is carried on the dust and refuse collected from the floor must not be deposited in any room in which work is carried on.

In a room in which grindstones are raced, unless adequate appliances are used to prevent the escape of dust, a sufficient interval after racing shall be allowed for the dust to subside, and then the floor, belt races and uncovered parts of the machinery and tools shall be cleansed in the prescribed manner. In every room in which is carried on any wet grinding of metals, dry grinding or the racing of grindstones, and certain scheduled finishing processes, the floor, belt races and uncovered parts of the machinery must at least once in each week, on a fixed day, be thoroughly cleansed from dust, and for the purpose of such cleansing the floor and belt races must be damped or otherwise treated to prevent dust from rising, the usual limewashing must be carried out (that is, in spite of the room coming within the exceptional cases which have been set out on p. 244), the windows must be kept thoroughly clean, each workman on finishing work for the day must leave his work place free from dust, and must also cleanse the same from dust after every racing that is done in the room.

Where in the smelting of materials containing lead, or in the manufacture of red or orange lead, or flaked litharge a lead process is carried on which gives rise to dust or fumes, then the floor, except such portion as is permanently set apart for the deposit of lead material, must be sprayed with water at least once a day.

The provision of suitable clothing is sometimes made obligatory, but this is a matter which can also be separately dealt with by a Welfare Order (see p. 273 below).

Every hand file cutter must when at work wear a long apron reaching from the shoulders and neck to below the knees.

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In the manufacture of electric accumulators overalls must be provided for all persons employed in manipulating dry compounds of lead or in frosting. The overalls must be washed or renewed once every week.

In the case of persons removing the dust from the exhaust draughts used in connection with wool sorting, etc., both overalls and respirators must be provided. Before removal for washing or other purposes these overalls must have been steeped overnight in boiling water or in disinfectant.

In wet spinning of flax and tow efficient splash guards must be provided on all wet spinning frames of less than $2\frac{3}{4}$ inch pitch unless waterproof skirts and bibs of suitable materials are provided by the occupier and worn by the workers. Persons employed in machine hackling, preparing, and carding of flax and tow must be provided with sufficient and efficient respirators, so also if employed on similar processes on hemp or jute.

In the manufacture of lead colours overalls must be provided for all persons employed in lead processes or at the roller mills, and the overalls must be washed or renewed once every week.

In the case of persons employed in heading yarn dyed by means of a lead compound the Chief Inspector may by notice in writing require the provisions of suitable overalls and head coverings, which are to be collected at the end of every day's work and be washed and renewed at least once every week.

In the case of persons employed on horsehair from China, Siberia or Russia which has not been disinfected suitable overalls and head coverings must be provided. These must be washed or renewed at least once every week and must not be taken out of the works for any purpose whatever, unless they have previously been boiled for ten minutes or have undergone disinfection after last being used.

In the case of persons employed in the vitreous enamelling of metal or glass suitable overalls and head coverings must be provided. These must be collected at the end of every day's work and be cleansed or renewed at least once a week. Every person employed must so arrange the hair that it shall be effectually protected from dust by the head covering.

In factories in which East Indian wool is used the occupier must provide and maintain suitable overalls and respirators to be worn by the persons engaged in collecting and removing the dust.

In the case of the manufacture of explosives from dinitro-benzol or dinitrotoluol besides the usual provisions as to suitable overalls

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there must be provided for all persons handling the scheduled substances indiarubber gloves, which must be collected, examined, and cleansed at the close of the day's work and must be repaired or renewed when defective, and for the use of persons employed on certain processes there must be provided clogs or other suitable protective footwear.

In factories and workshops where tinning is carried on aprons or other equivalent protection must be provided for all women employed in tinning.

Suitable respirators must be worn by all persons employed or engaged in the racing of grindstones, whether in a room or the open air.

In the case of the smelting of materials containing lead or the manufacture of red or orange lead or flaked litharge five processes are enumerated for which suitable overalls must be supplied for all the persons employed in them. These overalls must be washed, cleaned or renewed at least once a week. For such persons and also for persons removing lead material to a furnace, where special precautions are not practicable, suitable respirators must be provided, and these must be washed or renewed at least once a day.

In the case of bronzing in connection with printing suitable overalls must be provided for all persons employed and head coverings for the females employed in that process. Overalls and head coverings must be collected at the end of each day's work and be washed or renewed at least once a week.

In the manufacture of chromate and bichromate of potassium or sodium sufficient and suitable overall suits for the use of all persons engaged in grinding the raw materials must be provided, and these suits must be washed, cleaned or renewed at least once a week. Further suitable and sufficient protective coverings must be provided for the use of all persons engaged in the crystal department and in packing. Again, there must be provided suitable respirators for the use of all persons employed in packing bichromate of potassium or sodium, and these respirators must be washed or renewed at least once every day.

The periodical examination of the workers by a duly qualified medical practitioner (called the surgeon or appointed surgeon) is another very general device.

Every person employed in a lead process in the manufacture of electric accumulators must be examined once a month by the appointed surgeon, who shall have power to suspend from employment in any such process. Similarly in the manufacture of lead colours every person employed in a lead process or at the roller

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mills connected with the grinding in oil of lead colour must be examined once a month by the appointed surgeon and is liable to suspension from employment.

Similar provisions apply to persons employed in the manufacture of explosives from dinitro-benzol and dinitrotoluol.

Every person employed in the heading of yarn dyed by means of a lead compound must be examined by the surgeon once in every *three* months or at shorter intervals if required by the Chief Inspector of Factories, and is liable to suspension.

Every person employed in the vitreous enamelling of metal or glass must be examined by the surgeon once in every *three* months, or at shorter intervals if required by the Chief Inspector of Factories, and is liable to suspension.

Similar provisions apply to every person employed in tinning in a factory or workshop where tinning is carried on in the manufacture of metal hollow ware, iron drums and harness furniture.

In the case of persons employed in lead processes in connection with the smelting of materials containing lead or the manufacture of red or orange lead or flaked litharge, there must be a monthly examination by the surgeon unless the Chief Inspector of Factories prescribes a shorter or longer interval.

In the case of the manufacture of chromate or bichromate of potassium or sodium every person employed in a chrome process must be examined by the surgeon once in every calendar month on a date of which due notice must be given. The surgeon must undertake any necessary treatment of lesions contracted in consequence of such employment.

The absolute separation, not merely of the meal from the work, but of food, etc., from the work is another device where poisonous materials are in use.

Thus in the manufacture of electric accumulators no person is allowed to introduce, keep, prepare or partake of any food, drink or tobacco in any room in which a lead process is carried on (except sanitary drink provided by the occupier and approved by the appointed surgeon). Suitable provisions must be made for the deposit of food brought by the workers.

Similar provisions apply to persons in rooms where work or unwashed wool, etc., is carried on.

In the manufacture of lead colours there is a similar provision applicable to any room in which a lead process is carried on.

No person employed on horsehair from Russia, China or Siberia which has not been disinfected may introduce, keep, prepare

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or partake of any food, drink or tobacco in any room in which such material is stored or manipulated.

No person employed in the vitreous enamelling of metal or glass may introduce, keep, prepare or partake of any food, drink or tobacco in any room in which an enamelling process is carried on.

A similar provision applies to certain processes in the manufacture of explosives from dinitro-benzol and dinitrotoluol.

The provision in the case of the tinning of metal hollow-ware, etc., is that no person employed in tinning, mounting, denting, or scouring may keep or prepare or partake of any food or alcoholic drink in any room in which such work is carried on.

The provision in the case of the smelting of materials containing lead, and in the manufacture of red or orange lead or flaked litharge is that no person employed shall introduce, keep, prepare or partake of any food or drink (other than a non-alcoholic drink approved by the surgeon), or make use of tobacco in any place in which a lead process is carried on, but except in certain specified processes, a person may smoke a pipe (not a cigar or cigarette) if his hands are free from lead. The provision in the case of bronzing in connection with printing is that no person employed may introduce, keep, prepare or partake of any food or drink (other than milk or tea provided by the occupier) in any part of the factory or workshop in which bronzing is carried on, or make use of tobacco in any such place.

The provision in the case of persons employed in the manufacture of chromate and bichromate of potassium and sodium is simply that no person shall take a meal in the crystal department.

In certain industries *the maintenance of a particular temperature* is an important matter. In the flax and tow industry the rooms in which dust is generated and in which certain special ventilation is enjoined must be kept for some operations at a minimum temperature of 50 degrees and for other operations of 55 degrees. Where wet spinning is carried on, or where artificial humidity of air is produced in aid of manufacture there must be a set of standardised wet and dry bulb thermometers, and the humidity of the atmosphere of these rooms must not at any time be such that the difference between the readings of the wet and dry bulb thermometers is less than 2 degrees.

In the hemp and jute industry there are similar provisions, except that wet spinning is not mentioned and no express limit is put on the humidity of the air of rooms where artificial humidity is produced.

The provisions of (a) *cloak rooms* for outer clothing, (b) *store*

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rooms for protective clothing used at work, and (c) *mess rooms*, is made obligatory for certain workers.

In the manufacture of lead colours there must be provided for all persons employed in lead processes or at the roller mills (a) a cloak room or other suitable place in which such persons can deposit clothing put off during working hours and separate and suitable arrangements for the storage of overalls, and (b) a dining room, unless all the workers leave the factory during meal hours.

In the flax and tow industry there must be cloak room accommodation for all persons employed in any room in which wet spinning is carried on, or in which artificial humidity of air is produced in aid of manufacture.

For persons employed in heading yarn dyed by a lead compound there must be provided both a suitable cloak room and a suitable meal room. If the Chief Inspector requires the provision of overalls and head coverings, a separate store room must be provided.

The persons employed on disinfected horsehair from China, Siberia or Russia must be provided with a suitable meal room, separate from any work room, unless the works are closed during meal hours, and also with a suitable cloak room and a suitable place for the storage of their overalls.

There must be provided and maintained for all persons employed in the vitreous enamelling of metal or glass a suitable store room for overalls, etc., a suitable cloak room and a suitable meal room separate from any room in which enamelling processes are carried on, unless the works are closed during meal hours. Similar provisions apply to all persons employed in the manufacture of explosives from dinitro-benzol and dinitrotoluol.

In the tinning of metal hollow-ware a cloak room must be provided for all women employed in tinning, and a separate meal room for all persons employed in tinning, mounting, denting or scouring.

A suitable meal room, cloak room and store room must be provided for all persons employed in any lead process in connection with the smelting of materials containing lead and the manufacture of red or orange lead or flaked litharge.

Similar provision must be made for the use of all persons employed in any chrome process in the manufacture of chromate or bichromate of potassium or sodium.

Recently a good deal of attention has been given to *precautions against infection through small cuts and scratches* and the like. Something has already been said about this in dealing with Wel-

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fare Orders bearing on slight accidents. Some of the following provisions are much earlier in date than Welfare Orders. To obviate danger from anthrax in wool sorting, etc., one of the regulations (which came into operation 1st January, 1906), is that requisites for treating scratches and slight wounds shall be kept at hand. Further, every person employed in a room in which unwashed wool or hair of the kinds mentioned in the schedules to the order is bound, if he has any open cut or sore, to report that fact at once to the foreman and must not work in such room.

The same rules were subsequently applied to persons who worked on horsehair from China, Siberia or Russia which had not undergone disinfection. Such persons must report any cut or sore to the foreman, and until it has been treated must abstain from work on any such material.

In the case of the manufacture of chromate* or bichromate of potassium or sodium, requisites (approved by the surgeon) for treating slight wounds and ulcers must be kept at hand and be placed in the charge of a responsible person.

The use of certain substances requisite for the making of explosives with dinitro-benzol and dinitrotoluol gives rise to certain forms of skin poisoning. Accordingly in such manufacture certain substances as scheduled to the Regulations must not be broken by hand in a crystallising pan, nor must any liquor containing such substance be agitated by hand, except by means of an implement at least six feet long. Further, cartridges are not to be filled by hand, except by means of a suitable scoop.

In this way the reader has been made acquainted with the substance of all the Special Regulations¹ which have been applied to dangerous industries with one important exception, and that is the pottery industry. This industry involves many points of danger. The use of lead, the carrying of heavy weights, the heated atmosphere in which certain processes are done, are all dangers for which safeguards must be found. The result is that the "Regulations for factories and workshops in which the manufacture or decoration of pottery or any process incidental thereto is carried on, including factories and workshops in which lithographic transfers, pits or glazes are made for use in the manufacture or decoration of pottery" constitute a code of rules of greater elaboration than is possessed by any other industry,

¹ For the provisions of the Women and Young Persons (Employment in Lead Processes) Act, 1920, see Addendum C to Section III, chapter 3, and the Addendum A to this chapter.

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except possibly the coal mining industry. It contains at least one feature of supreme interest—namely, a provision for the self inspection of the factory or workshop. Under these circumstances it seems worth while to give a summary of the Regulations as a whole. The Regulations begin with a series of definitions of the technical terms used. Then follow a list of the exemptions granted to two classes of factories where the risks are somewhat less than in the normal factory. These factories are 'leadless glaze factories' and 'low solubility glaze factories.' Part I contains the duties of occupiers and Part II contains the duties of persons employed.

Regulation 1 contains the absolute and conditional prohibitions of the labour of women and young persons to which some reference has already been made on p. 135. There are some prohibitions which are absolute for the whole of the classes of women and young persons, while some are conditional on the attainment of a certain age, and others are conditional on the procuring of a certificate of permission to work given by the surgeon. The certificate of permission to work may itself be unqualified or may specify in the case of carrying clay, or other systematic carrying or lifting work, the maximum weight which may be carried. About a score of different cases are dealt with.

Regulation 2 deals with medical examinations. All persons employed in the scheduled lead processes have to be examined once in each calendar month by the surgeon. Persons employed in certain other processes have to be examined once in every twelve months by the surgeon. Certificates of permission to work must be given after an examination by the surgeon made during the first seven days of the employment. All young persons employed in the carrying of clay or other systematic carrying or lifting work must be re-examined by the surgeon twice in the first period of six months and once in each period of six months thereafter, until they attain the age of eighteen. A private room must be provided for all medical examinations. No one may be present except such other medical man as the surgeon may, with the worker's consent, admit, and, in addition in the case of a female, any one female relative may be present ; or, alternatively, any one workwoman in the factory approved by the worker and the surgeon.

Regulation 3 provides for a health register, in which the examinations and their results are recorded and also a list of certificates granted and directions given by the surgeon. All such entries as indicate the general health of the worker must be so expressed

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as to be readily understood both by occupiers and persons employed.

Regulation 4 relates to protective clothing. For all scheduled processes in general both suitable overalls and head coverings must be provided. Head coverings must be adequate to protect the hair from dust and must be worn in such manner as to be effective for this purpose. Waterproof aprons must be provided for dippers, etc. Aprons must be sponged daily ; overalls and head coverings must be washed or renewed at least once a week ; they must not be taken home, but must be dealt with either at the factory or a laundry. Cupboards or rooms must be provided for the protective clothing when not in use, and a separate peg must be provided for each worker who is required to wear overalls.

Regulation 5 requires the provision of cupboards or cloak rooms for clothing put off during working hours. All such cupboards or rooms must be entirely separated from any source of lead or other dust, and from any place provided for the keeping of protective clothing and must be kept thoroughly clean by the occupier. The occupier must also make adequate provision for drying such outdoor clothing, if wet, during the time it is put off in working hours.

Regulation 6 deals with the provision of mess rooms for workers on certain processes. No person is to be allowed to keep or prepare or partake of any food, drink, or tobacco or to remain during meal times in any place in which any scheduled process is carried on, and in certain other places. For these workers mess-room accommodation must be provided, and for the first time a definite standard is set up. It must consist of a clean, well ventilated, and well lighted room or rooms in which no manufacturing process is carried on ; it must be at or near the factory and must be sufficiently large to accommodate all the workers employed as above, allowing floor space in accordance with the following scale :

In mess rooms for—

6 persons and under ...	10½ sq. ft. per person
Over 6 persons and up to 12 ...	7½ sq. ft. per person.
Over 12 persons and up to 20 ...	6 sq. ft. per person.
Over 20 persons and up to 28 ...	5½ sq. ft. per person.
Over 28 persons and any number	5 sq. ft. per person.

Mess rooms must be provided with proper tables and seats and a temperature of not less than 50 degrees must be maintained. They must be thoroughly cleaned daily at the occupier's expense. Protective clothing must not be taken into the room. A suitable

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place for the deposit of food must be provided for each worker using the mess room. Adequate facilities must be provided to enable workpeople to heat their food. A supply of milk or cocoa made with milk must be provided for all women and young persons working on the scheduled lead processes who commence work before 9 a.m. Not less than half-a-pint must be provided for each such worker at the expense of the occupier.

Regulation 7 enumerates eighteen processes which are not to be carried on without the use of an efficient exhaust draught. It contains besides elaborate provisions safeguarding the worker from dust, and the general object is indicated by clause (m), which states that in all processes the occupier must, as far as practicable, adopt efficient measures for the removal of dust, and for the prevention of any injurious effects arising therefrom.

Regulation 8 makes the wearing of an efficient respirator compulsory in certain processes. They must be kept clean by the occupier, and each respirator must bear the distinguishing mark of the worker to whom it is supplied.

Regulation 9 deals with ventilation. It consists of nine clauses and insures thorough ventilation by properly placed fresh air inlets of all work rooms and special ventilation of drying stoves, etc.

Regulation 10 deals with the temperature and moistness of work rooms, and the temperature of ovens when being drawn.

Regulation 11 deals with lavatory accommodation. It is on the usual lines, but includes the allowance of ten minutes washing time before leaving off work, and contains directions as to space for washing, the size of the towels to be provided, the number of nail brushes to be supplied, and as to the separation of the lavatories for males and females.

Regulation 12 deals with the provision of proper floors and the cleaning of them. For many operations impervious floors are required, for others wooden floors with a thoroughly smooth and sound surface, and the floor in general must be capable of being cleaned by a moist method. All floors must be cleaned daily by some method of moist cleaning, and in many instances the cleaning must be done by adult male labour.

Regulation 13 deals with the construction and cleaning of the work benches in potter's shops and in places where scheduled processes are carried on.

Regulation 14 deals with the handling and storage of raw lead compounds. Lead houses must have a special lavatory, and a solution of soluble sulphides must be provided in which workers

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in the lead house must rinse their hands after washing, so as to show if they are free from lead.

Regulations 15 to 21 deal with various and special aspects of cleaning the premises and the apparatus, and dealing with the factory rubbish.

Regulation 22 deals with glaze or colour blowing. For this there is a special eyesight test, and other precautions.

Regulations 23 and 24 deal with special processes.

Regulation 25 contains a series of limitations of hours for different classes of workers, including adult males, engaged on various processes. These provisions have already been dealt with on pp. 156-7.

Regulation 26 deals with the posting up of the Regulations or the portions of them which apply to particular work places.

Regulation 27 is the self inspection provision and is of sufficient importance to be reproduced verbatim :—

(a) A person or persons shall be appointed who shall see to the observance, throughout the factory, of the Regulations, and whose duty it shall be to carry out systematic inspection of the working of all the Regulations in the departments for which they are individually responsible. The names of the persons so appointed shall be recorded in the register.

(b) Each person so appointed shall be a competent person fully conversant with the meaning and application of the Regulations in so far as they concern the departments for which he is responsible. He shall keep in the factory a book in which he shall record any breach of the Regulations, or any failure of the apparatus (fans, etc.) needed for carrying out the provisions, that he may have observed, or that may have been brought to his notice within the preceding twenty-four hours, together with a statement of the steps then taken to remedy such defects or to prevent the recurrence of such breach. Each entry in such book shall be dated and initialled by the person appointed, who at the end of each week shall make a further entry stating that the inspection required by paragraph (a) has been carried out, and that all the defects observed or brought to his notice have been recorded in the book. Such book shall be kept in the factory for at least six months after the latest entry therein.

(c) Accurate extracts, clearly and legibly expressed, shall be made of these entries once a week, and signed by the occupier or someone whom he may appoint, and displayed during the following week in a conspicuous place in the departments to which they refer, and copies of all such extracts shall for the

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same time be displayed in a conspicuous place in the mess rooms.

The duties of the persons employed are such as are necessary to give effect to the foregoing regulations. For the most part they are quite obvious, and to state them would only involve repetition. One or two personal matters are of some interest. Thus, the prescribed head coverings must be worn in such a manner as effectually to protect the hair from dust, and the hair must be so arranged as to permit of this. Again, every worker for whom milk or cocoa is provided in accordance with Regulation 6 must drink the same, unless a medical certificate is produced showing cause for exemption.

It has already been stated that under certain sections of the Police, Factories, etc. (Miscellaneous Provisions) Act, 1916, the Home Office is empowered to make Orders requiring the provision of ambulance and first aid arrangements at any specified works or classes of works, and the existing Orders on these points have been dealt with in the section on Safety.

This power of making Welfare Orders covers other points which are closely related to health and which can be conveniently dealt with here. In fact it will be seen that the provisions of these Welfare Orders are mainly applications to industries which have not been certified to be dangerous, of certain amenities which have proved very useful in dealing with dangerous industries. The power of making Welfare Orders was given by the Act in respect of the following matters—namely :

- Arrangements for preparing and heating and taking meals,
- The supply of drinking water,
- The supply of protective clothing,
- Ambulance and first aid arrangements,
- The supply and use of seats in work rooms,
- Facilities for washing,
- Accommodation for clothing,
- Arrangements for supervision of workers,

with a general power of adding other matters by issuing a Special Order under section 126 of the Factory and Workshop Act, 1901.

Recently the Home Secretary has, in virtue of this power, added to the above list—

- The provision of rest rooms.

We may now examine the existing Welfare Orders so far as they relate to the health of workers.

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The Welfare Order for tin or terne plate factories (*S. R. and O.*, 1917, No. 1035) obliges the factory occupier to provide and maintain in good condition for the use of all persons engaged in pickling or handling wet plates,

- (1) sufficient and suitable waterproof aprons and clogs
- (2) cloak room accommodation and also the means of drying wet clothing and
- (3) mess rooms.

A General Welfare Order (*S. R. and O.*, 1917, No. 1068) applicable to all factories and workshops employing twenty-five persons or more, puts an obligation on the occupier to provide a sufficient supply of drinking water clearly distinguished as such.

A Welfare Order applicable to the manufacture of (1) glass bottles, and (2) pressed glass articles (*S.R. and O.*, 1918, No. 558) makes the occupier provide (1) a suitable cloak room with adequate arrangements for drying the clothing if wet, (2) a suitable mess room with sufficient tables and chairs (or benches with back rests), adequate means of warming food and boiling water, and suitable facilities for washing. This accommodation is to be placed under the charge of responsible persons and is to be kept clean.

Further, there is to be an adequate supply of wholesome drinking water, without regard to the numbers employed.

There is also a Welfare Order in force which was made for munition workers (*S. R. and O.*, 1918, No. 824) and requires seats to be provided for female shell workers.¹

So far we have been dealing with the provisions that insure a reasonable care for the health of persons employed in factories and workshops. A considerable amount of work is still given out to be done outside factories and workshops, and it is therefore advisable to have certain safeguards against the employment of persons in unwholesome premises other than factories and workshops. The foundation of these safeguards is the list of outworkers which must be kept by the occupier of every factory and workshop and every contractor employed by any such occupier if they are engaged in certain classes of work. The general provisions as to these lists are contained in sections 107-115 of the Factory and Workshop Act, 1901, but the actual classes of work were to be specified from time to time by the Home Secretary. At the present time outworkers' lists must be kept for the following classes of work :—

¹ A Hollow-ware and Galvanising Welfare Order, 1921, came into force on 1st February, 1922.

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The making, cleaning, washing, altering, ornamenting, finishing and repairing of wearing apparel.

The making, ornamenting, mending and finishing of lace and of lace curtains and nets.

Cabinet and furniture making and upholstery work.

The making of electro-plate.

The making of files.

Fur-pulling.

The making of iron and steel cables and chains.

The making of iron and steel anchors and grapnels.

The making of cart gear, including swivels, rings, loops, gear buckles, mullin bits, hooks, and attachments of all kinds.

The making of locks, latches, and keys.

The making or repairing of umbrellas, sunshades, parasols or parts thereof.

The making of artificial flowers.

The making of nets other than wire nets.

The making of tents.

The making or repairing of sacks.

The covering of racquet or tennis balls.

The making of paper bags.

The making of boxes or other receptacles or parts thereof made wholly or partially of paper, cardboard, chip, or similar material.

The making of brushes.

Pea-picking.

Feather-sorting

The carding, boxing or packeting of buttons, hooks and eyes, pins and hair-pins.

The making of stuffed toys.

The making of baskets.

The making of chocolates or sweetmeats.

The making or filling of cosaques, Christmas crackers, Christmas stockings or similar articles or parts thereof.

The weaving of any textile fabric.

And any processes incidental to the above.

The obligation is (a) to keep in the prescribed form and manner lists showing the names and addresses of all persons directly employed either as workmen or as contractors in the business of the factory or workshop outside the factory or workshop and the places where they are employed, (b) to send to an inspector such copies of or extracts from those lists as the inspector may from time to time require, and (c) to send on or before 1st February and August

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in each year copies of those lists to the local authority of the district in which the factory or workshop is situate.

The local authority must examine each list, and if it appears that any place where a workman is employed is outside the district of the local authority receiving the list, then the local authority must pass on the name of the workman and his place of employment to the local authority of the district in which the place of employment lies. This seems a little complicated, but it comes to this—the employer who gives out work sends a list of the outworkers to his own local authority and the local authority then sorts out the places of employment of the individual outworkers, so that each local authority has a complete list of the places of employment of all outworkers in its district, irrespective of where the work was originally given out.

In Birmingham in the year 1918 the Public Health Department received 552 lists, distributed amongst eight industries only—namely, (1) 385 makers of wearing apparel, who gave out work to 993 contractors and 1,251 individual workpeople, (2) 74 employers in the button, hook and eye, and pin trades, who gave out work to 10 contractors and 1,129 individual workpeople, (3) 39 employers in the paper-box and paper-bag trades, who gave out work to 1 contractor and 138 individual workpeople, (4) 30 employers in the electro-plate trading, giving out work to 184 contractors and only 39 individual workpeople, (5) 13 employers in brush-making, who gave out work to 114 individual workpeople, (6) 8 makers of brass articles, who gave out work to 26 contractors and 42 individual workpeople, (7) 2 file makers, who apparently sent blank lists for the year, and (8) 1 maker of stuffed toys, who gave out work to 4 workpeople.

The local authority through their health department should be aware of the condition of the premises on which out work is being done, and if it gives notice in writing to the occupier of the factory or workshop or to any contractor employed by any such occupier that the premises are injurious or dangerous to the health of the persons employed thereon, then if the occupier or contractor after the expiration of one month from the receipt of the notice gives out work to be done on those premises and the case is taken into Court and the premises are proved to be injurious or dangerous, he is liable to a fine.

Further, if the occupier of a factory or workshop or of any place from which any work is given out, or any contractor employed by any such occupier, causes or allows wearing apparel to be made, cleaned or repaired in any dwelling-house or building

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occupied with it, whilst any inmate of the dwelling-house is suffering from scarlet fever or small-pox, then unless he proves that he was not aware of the existence of the illness in the dwelling-house, and could not reasonably have been expected to become aware of it, he is also liable to a fine. As scarlet fever and small-pox are notifiable diseases, the medical officer, on getting notification of a case, can search the outworkers' lists, and if he finds that the case is at a dwelling-house where an outworker is employed, he can at once notify the employer of the existence of the illness. Again, if any inmate of a house is suffering from any notifiable infectious disease, the local authority (or in an urgent case two or more members of that authority acting on the advice of the medical officer of health) may make an order forbidding any work of a certain class to be given out to any person living or working in that house, or a specified part of it, and such order may be served on the occupier or contractor. The order may be made either for a specified time, or subject to disinfection of the house or to the adoption of other reasonable precautions. The classes of work to which this enactment applies are the same as for the outworkers lists except that the making of the various metal articles and cabinet and furniture making are omitted.¹

The provisions dealing with health in mines are not elaborate. The reduction of working hours to seven per day has already been noted. The Coal Mines Act provides for the making of general regulations as to sanitary conveniences both above and below ground. Sections 106-112 of the General Regulations now in force deal with this matter.

The question of baths for miners is dealt with in a somewhat novel manner. Accommodation for taking baths and facilities for drying clothes must be provided at the mine if three conditions are satisfied, one of which is that the workmen have to pay half the cost of maintenance. The first condition is that a vote must be taken by ballot of all the workmen employed underground and of all workmen engaged on the surface in handling tubs, screening, sorting or washing coal, or loading coal into wagons, and on this vote there must be a two-thirds majority in favour of the provision of this accommodation and these facilities. The second condition is that the workmen shall pay half the cost of maintenance, and the third condition is that the estimated cost of maintenance must not exceed threepence per week for each workman liable to contribute. Under this scheme the capital expenditure falls on the mine owner but the cost of maintenance includes interest on capital expenditure

¹ The excepted cases are denoted by italics in the list given on p. 275.

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not exceeding 5 p.c. per annum. The workmen's contributions may be recovered by the mine owner by deduction from their wages. The management of the accommodation and facilities provided is to be under the control of a committee to be established in accordance with the regulations of the mine and consisting as to one half of members appointed by the owner of the mine, and as to the other half of members appointed by the workmen liable to contribute to the expense of maintenance. The scheme does not apply to mines where the voters and contributors number less than one hundred.

There is one express enactment guarding against a form of dust which is liable to give rise to fibroid phthisis. A drill worked by mechanical power must not be used for drilling in ganister, hard roadstone, or other highly silicious rock, unless a water jet or spray or other means equally efficient is used to prevent the escape of dust into the air.

There is also a general provision for the notification of industrial diseases. Written notice of every case of any disease occurring in a mine and occasioned by the nature of the employment (being a disease specified in an Order made by the Home Secretary for the purpose) must forthwith be sent to the inspector of the division and the provisions of the Act with respect to the notification of accidents is to apply to any such case.¹

In the case of shop assistants there is one provision intended to protect female shop assistants from fatigue. Under the Shops Act, 1912, in all rooms of a shop where female assistants are employed in the serving of customers, the occupier of the shop must provide seats behind the counter, or in such other position as may be suitable for the purpose, and such seats must be in the proportion of not less than one seat to every three female shop assistants employed in each room.

As long ago as 1908, when the departmental Committee on the working of the Truck Acts was sitting, a good deal of attention was given to the living in system in shops and a case was apparently made out for some interference by the State in order to establish a minimum standard of living but nothing has so far been done in the matter.

Addendum A.—Under section 2 of the Women and Young Persons (Employment in Lead Processes) Act 1920, women and young persons may only be employed on a process producing dust or fume from a lead compound, or where the persons employed

¹ For an interesting provision on general lines in the Mining Industry Act, 1920, see Addendum B to this chapter.

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are liable to be splashed with any lead compound in the course of their employment, if the following regulations are complied with :—

(a) Where there is dust or fume it must be drawn away from the persons employed by means of an efficient exhaust draught.

(b) The persons employed must undergo the prescribed medical examination at the prescribed intervals, and the prescribed record must be kept with respect to their health.

(c) No food, drink, or tobacco shall be brought into or consumed in any room in which the process is carried on, and no person shall be allowed to remain in any such room during meal times.

(d) Adequate protective clothing in a clean condition shall be provided by the employer and worn by the person employed.

(e) Such suitable cloak room, mess room, and washing accommodation as may be prescribed shall be provided for the use of the persons employed.

(f) The rooms in which the persons are employed and all tools and apparatus used by them, shall be kept in a clean condition.

The Home Office has drafted an Order defining lead compound as any compound of lead other than galena which when treated in the manner prescribed by the Order, yields to an aqueous solution of hydrochloric acid, a quantity of a soluble lead compound exceeding, when calculated as lead monoxide, 5 per cent. of the dry weight of the portion taken for analysis.

The Home Office has also drafted an Order prescribing a medical examination once in every three months for all women and young persons employed in a lead process and not subject to periodic medical examinations under any Regulations in force under the Factory and Workshop Acts. The Home Office has drafted a third Order prescribing the cloak room, mess room, and washing accommodation to be provided. It is on the lines of existing Orders already described.

Section 4 of the same Act extends the notification of cases of lead poisoning under section 73 of the Factory and Workshop Act, 1901, to lead poisoning contracted by any woman or young person in processes involving the use of lead compounds, whether carried on in factories or workshops or not.

Addendum B.—Under section 20 of the Mining Industry Act, 1920, a fund is to be constituted and applied for such purposes connected with the social well being, recreations, and conditions of living of workers in or about coal mines, and with mining education and research as the Board of Trade after consultation with any Government Department concerned may approve. The fund consists of one penny per ton raised per annum.

CHAPTER II

COMPENSATION FOR INDUSTRIAL DISEASES

IN spite of the measures for the prevention of industrial diseases which we have been considering a considerable number of cases occur each year, and in cases where the connection between the class of disease and the occupation is reasonably clear there is just as good a case for compensation as in the case of industrial accidents. It is one of the outstanding merits of the Workmen's Compensation Act, 1906, that it recognised this, and elaborated a scheme for the application of compensation to the cases of certain specified diseases. It began with the five diseases notifiable under section 73 of the Factory and Workshop Act, 1901—namely, anthrax, lead poisoning, mercury poisoning, phosphorus poisoning, and arsenical poisoning, and it added one mining disease namely, ankylostomiasis. The Home Secretary was authorised to make orders for the inclusion of other industrial diseases, and in 1907, in accordance with the recommendations of a departmental Committee, eighteen other diseases were scheduled. Since that time diseases have been added in units and the latest Consolidating Order (*S.R. and O.*, 1918, Order No. 287) brings the total number of scheduled diseases to thirty, including the six diseases comprised in the Act of 1906.

The general scheme under the Act cannot be applied to industrial diseases without certain modifications and conditions. The conditions are that there must be (a) evidence in a specified form of the existence of the scheduled disease, and (b) evidence that the disease is due to the nature of some employment in which the workman was employed within the twelve months previous to the date of disablement or suspension. The evidence which is required under the Act takes three possible forms—(1) A certificate of the certifying surgeon under the Factory and Workshop Act, 1901, for the district in which the workman is employed to the effect that the workman is suffering from a scheduled disease and is thereby disabled from earning full wages at the work at which he was employed; (2) Proof that the workman has, in pursuance of some special rule or regulation made under

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the Factory and Workshop Act, 1901, been suspended from his usual employment on account of having contracted any such disease; (3) Proof that the death of the workman has been caused by any such disease.

Where such evidence is forthcoming the workman is or his dependants are entitled to compensation under the Act as if the disease or the suspension were a personal injury by accident arising out of and in the course of that employment, but subject to the following modifications :—

(a) The disablement or suspension from work is to be treated as the happening of the accident.

(b) If it is proved that the workman has at the time of entering the employment wilfully and falsely represented himself in writing as not having previously suffered from the disease compensation is not to be payable.

(c) The compensation is to be primarily recoverable from the employer who last employed the workman during the preceding twelve months in the employment to the nature of which the disease was due. There are certain provisions inserted under this heading for enabling an employer who only employed the workman for the last part of the twelve months to obtain information as to the earlier employers in that period and for joining such earlier employers as parties in the proceedings, and for distributing the liability for a disease contracted by a gradual process between all the employers for the twelve months.

(d) The amount of the compensation is to be calculated with reference to the earnings of the workman under the employer from whom compensation is actually recoverable.

(e) The employer to whom notice of death, disablement or suspension is to be given is the employer who last employed the workman during the preceding twelve months in the employment to the nature of which the disease was due, and the notice may be given, notwithstanding that the workman has voluntarily left his employment.

(f) If an employer or a workman is aggrieved by the action of a certifying or other surgeon in giving or refusing to give a certificate of disablement, or in suspending or refusing to suspend a workman, the matter may be referred to a medical referee, whose decision shall be final.

The schedule of diseases is drawn up in two columns, the first of which names the disease and the second describes the process with which the disease is commonly connected. The object of this is the insertion of a provision in the workman's

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favour, which runs as follows : If the workman at or immediately before the date of disablement or suspension was employed in any process mentioned in the second column of the schedule, and the disease contracted is the disease in the first column set opposite the description of the process, the disease (except where the certifying surgeon certifies that in his opinion the disease was not due to the nature of the employment) shall be deemed to have been due to the nature of that employment, unless the employer proves the contrary. Thus, if a person who has been handling wool, hair, bristles, hides or skins, develops anthrax, then the burden of proof that the anthrax was not due to that employment is in general on the employer, and until he proves this the anthrax is deemed to be due to the employment. In a recent case it was decided that the description of the process is not inserted in order to limit claims on account of a scheduled disease to cases arising from the scheduled process. The facts of that case were as follows : One of the diseases so scheduled is 'beat hand,' and in the column for the description of the process is the word 'mining.' A man who had been employed for over two years by a ship building company as a riveter's holder up, in October, 1917, became incapacitated from earning wages through having contracted beat hand in the course of his work. He was completely disabled until January, 1918. He claimed compensation for the time of his incapacity, but the employers resisted the claim on the ground that compensation was only payable under the Act for beat hand when the workman affected with that disease was a miner and had contracted it in the process of mining. Both the County Court judge and the Court of Appeal held that the description of a disease in the schedule was not intended to be limited in the case of a workman employed in the particular process specified in the second column. The award in favour of the workman therefore held good.

The date of disablement is to be such date as the certifying surgeon certifies as the date on which the disablement commenced, or if he is unable to certify such a date, the date on which the certificate is given. If the medical referee allows an appeal against a refusal by a certifying surgeon to give a certificate of disablement, the date of disablement shall be such date as the medical referee may determine. If a workman dies without having obtained a certificate of disablement, or is at the time of death not in receipt of a weekly payment on account of disablement, it shall be the date of death.

There is one non-scheduled industrial disease which is well

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marked and was under consideration as early as 1906, and for which special legislation has recently been passed. This is known as silicosis or fibroid phthisis and it is incidental to processes in which silicious dust is generated, such as mining and quarrying ganister rock and the making of ganister or silici bricks, which are collectively termed the refractories industries. It was not included under the Compensation Act of 1906, because it develops so slowly and because its earlier symptoms do not differ materially from innocent forms of coughs or bronchitis. Under the Workmen's Compensation (Silicosis) Act, 1918, the Home Office has power to make special schemes for the payment of compensation in cases of silicosis and under this power a scheme is now in force for the refractories industries. It sets up a general compensation fund to which all the employers in the industries concerned have to contribute. The employers have no individual liability. It also provides for a system of medical examination and suspension from employment, with a view to removing from the industry workmen who show signs of the disease but have not reached the stage of incapacitation. Each district has a local committee representing employers and workmen with an independent chairman, and these committees have power to settle all questions arising under the scheme except medical points.

The Departmental Committee which has recently investigated the working of the Act of 1906 has not many suggestions to offer on such part of it as relates to industrial diseases. They considered over again the question of the extent to which diseases could be brought within the scope of the Act and they re-affirmed the following passage from the Report of an earlier Departmental Committee of May, 1907: 'Many diseases may be regarded as trade diseases, and rightly so regarded, because they are known to be specially prevalent among the workers in particular industries, but they may not be specific to the trade, since they may frequently, although more seldom, attack persons engaged in other occupations. Bronchitis, for example, is a trade disease among flax workers; a larger proportion of that class suffer from it than of other people, but it is not specific to the employment, for numbers of persons who are not flax workers contract it also. Unless there is some symptom which differentiates the bronchitis due to dust from the ordinary type, it is clearly impracticable to include it as a subject of compensation, for no one can tell, in any individual case, whether the flax worker with bronchitis was one of the hundreds of persons in the town whose bronchitis

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had no connection with dust irritation, or whether he was one of the additional tens or scores of persons whose illness was due to that cause. To ask a Court of law to decide would be to lay upon it an impossible task. If the workman were required to prove his case, he might be able to show that a larger percentage of his trade suffer from bronchitis than do the rest of the population, but he could never show that he himself was a unit in the excess, and not in the normal part of that percentage. If it were the employer who was required to disprove a claim he could rarely, if ever, show that the workman did not contract his illness through his employment, and he would be compelled to compensate, not only those labourers whose bronchitis had a trade origin, but all those whose bronchitis was in no degree an industrial disease. We gather from the debates in Parliament that it was a recognition of this necessity of some means of deciding in individual cases whether or not the disease was due to the employment, which decided the Legislature not to open the door to claims from workmen suffering from any disease, as the door is open to claims on the score of any accident, but to proceed by way of scheduling those cases which can, in any given case, be differentiated as due to the special conditions of a trade.'

The Committee accordingly recommend that the policy of the Act in regard to industrial diseases—namely, its limitation to diseases specific to particular employments, should remain unaltered.

The Committee call attention to the question as to whether there is any power under the Act for a workman who claims to be suffering from a scheduled disease and his employer to agree to the payment of compensation in the absence of a certificate from the certifying surgeon. They consider that the Act should be amended so as to allow of this.

The Committee also make suggestions on minor points, which will be found in paragraphs 34 to 38 of their report.

APPENDIX

(A) COMPULSORY POWERS FOR JOINT INDUSTRIAL COUNCILS

The following passage illustrates the difficulties of these Councils without compulsory powers. It is taken from the judgment in *Webb v. C. Woodman and Sons*, 3M. T. Reports, p. 190, at pp. 208-9.

'The facts of the present case are as follows :—It appears that in 1919 there was in existence a Joint Industrial Council for the saw-milling industry formed under the Whitley Councils scheme. I need not further describe the objects and nature of that scheme beyond saying that it was brought into existence on the recommendations of a strong committee representing both employers and workmen and was designed to secure uniformity of practice and, so far as possible, harmony and agreement in the trade in which the Council should be set up. The Council was to be a joint council of workmen and employers. The joint Industrial Council for the saw-milling industry was one of very wide-reaching geographical scope, covering the whole of England, Scotland, Wales and Ireland. The appellants were members of the Western and Southern Counties Home-grown Timber Association. That association joined and became a constituent part of the Joint Industrial Council for the saw-milling industry. It was contemplated that there should be different rates for the big towns, small towns and the country, but otherwise the rates were to be universal. *The employers and workmen could not themselves agree what the rates should be.* Eventually, in May, 1919, they resolved to go to arbitration on the matter and appealed to the Ministry of Labour to help them carry out that idea. It is plain from the letters that passed between the Minister and the two sections of the Council that the Minister did not conceive it to be possible to arbitrate on that matter under the Wages (Temporary Regulation) Act, 1918, and he accordingly sent it for arbitration or settlement under the Conciliation Act, 1896, to the same body as would have dealt with it under the Wages (Temporary Regulation) Act, 1918; that is to say, to the interim Court of Arbitration. The Court of Arbitration made an award in accordance with the employers' views as to what would be the standard rate of wages. The employers in this case and in some other cases in the list before me to-day, were not willing to pay the rates laid down in that award, because they said that the rates were not made universally applicable by the Minister of Labour, as they were expecting that they would be made, *and they refused to pay the rates unless their neighbours and their rivals in all parts of the country were by some order or some statute or in some way made to pay them, too.*'

The following extract from the written answers to Parliamentary questions gives the official view of the difficulties in the way of making the agreements of Industrial Councils binding on the whole industry :—

'In the House of Commons, yesterday, Mr. Jesson asked the Minister of Labour whether he would consider the advisability of making the decisions and agreements upon wages, conditions and hours of employment arrived at by Industrial Councils binding upon the whole of the respective industries when they represent two-thirds of the workers and employers concerned, so as to prevent employers underselling those who are helping to establish

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industrial peace. In his reply, circulated in Parliamentary proceedings, Sir R. Horne pointed out that proposals of a similar nature had been rejected by the trade union organisations, largely on the ground that it was proposed, and justly so, to make compulsion two sided, penalties for breach being provided equally against employer and employed. He added 'Under the Trade Union Act of 1871 and the Trade Disputes Act, 1906, not only is it impossible to enforce legally an agreement made between employers' associations and workers' associations, but it is also impossible to bring an action against either such association for including or assisting its members to break the contract to which it has itself been a party. Contracts between employers' and workmen's associations rest, therefore, only upon the good faith of the parties to them, and unless the law is altered in this respect it is difficult to see how it is possible to make them legally binding upon persons who are not themselves parties to the agreement. The difficulty of making compulsion apply equally is perhaps not greater than the practical difficulties which would be involved in making agreements of Joint Industrial Councils compulsory on the whole trade. Not only would complicated questions of demarcation and trade definition inevitably arise, but the question of the extent to which any given group of employers or employed represented a large majority of the trade would require close examination. There is the further difficulty that certain wage settlements affect an industry while others affect a craft extending through a number of industries. Unless a substantial agreement of opinion exists among employers and workpeople I should not be prepared to introduce the necessary legislation.'

(B) TABLE OF TRADE BOARD RATES OF WAGES IN FORCE OR PROPOSED ON 20TH AUGUST, 1920.

Note.—The highest rate for skilled workers and the lowest rate for unskilled workers are alone given. The rates for men are given at the age of 21 or 22. The rates for women are in general given at the age of 18.

The Trade Boards cover Great Britain, except where otherwise stated.

Since this table was compiled a general movement of reduction has set in, but the object of the table is not to give up-to-date information, which indeed cannot be done, but to group the existing boards so far as they can be conveniently grouped, and to show the relative rates in force at a given date.

METAL TRADES

TRADE	MEN'S RATES		WOMEN'S RATES	
	SKILLED	UNSKILLED	SKILLED	UNSKILLED
Hollow-ware		58/6 per week of 47 hours		34/3 per week of 47 hours
Perambulators	1/10 p.h.	1/3½ p.h.	10½d. p.h.	8d. p.h.
Pins, Hooks and Eyes		1/3½ p.h.		9d. p.h.
Stamped or Pressed Metal Wares		1/4½ p.h.		9d. p.h.
Tin Box	1/5 p.h.	1/3½ p.h.		9d. p.h.

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CLOTHING TRADES

TRADE	MEN'S RATES		WOMEN'S RATES	
	SKILLED	UNSKILLED	SKILLED	UNSKILLED
Corset	1/9 p.h.	1/4½ p.h.		9¼d. p.h.
Dressmaking and Light Clothing (England and Wales) *	1/7 p.h.	1/2 p.h.	10¾d. p.h.	8½d. p.h.
Furs	1/8 p.h.	1/1¼ p.h.	11¼d. p.h.	8¾d. p.h.
Hat, Cap and Millinery (Eng- land and Wales)	1/9 p.h.	1/2 p.h.		8½d. p.h.
Lace finishing				7d. p.h.
Retail Bespoke Tailoring	1/9 p.h.	1/2 p.h.	10¾d. p.h.	9¼d. p.h.
Ready-made Tailoring	1/11¼ p.h.	1/2 p.h.	10¼d. p.h.	9¼d. p.h.
Shirtmaking	1/9 p.h.	1/4 p.h.		8½d. p.h.
Wholesale Mantle	1/5 p.h.	1/2 p.h.	9½d. p.h.	8½d. p.h.

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MISCELLANEOUS TRADES

TRADE	MEN'S RATES		WOMEN'S RATES	
	SKILLED	UNSKILLED	SKILLED	UNSKILLED
Acrated Waters (England and Wales)		61/- for 47 hours		33/6 for 47 hours
Ditto (Scotland)		54/10 for 47 hours		29/4½ for 47 hours
Brush and Broom	1/5½ p.h.	1/2 p.h.		8½d. p.h. at 21 years
Button making	1/6 p.h.	1/3½ p.h.		8½d. p.h.
Flax and Hemp		1/1½ p.h.		8d. p.h.
Hair, Bass and Fibre	1/6 p.h.	1/2 p.h.	6½d. p.h.	8½d. p.h.
Jute		1/0½ p.h.		8d. p.h.
Laundry		1/3 p.h.		7d. p.h.
Milk distribu- tion (England and Wales)	1/8 p.h.	1/1½ p.h.	1/1½ p.h.	8½d. p.h.
Paper Bag	1/8½ p.h.	1/4½ p.h.		9½d. p.h.
Paper Box	1/7½ p.h.	1/1½ p.h.		9½d. p.h.
Rope Twine and Net	1/6 p.h.	1/2 p.h.		8½d. p.h.
Sugar, Confec- tionery and Food Preserving		1/2½ p.h.		8½d. p.h.
Tobacco		1/3½ p.h.		9½d. p.h. at 21 years

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(C) SUMMARY OF RECOMMENDATIONS OF THE CAVE COMMITTEE ON THE TRADE BOARDS ACTS

- (1) That the power of the Minister of Labour to apply the Acts to a trade be confined to cases where he is satisfied (a) that the rate of wages prevailing in the trade or any branch of the trade is unduly low as compared with those in other employments; and (b) that no adequate machinery exists for the effective regulation of wages throughout the trade.
- (2) That in any case in which the Minister considers that a *prima facie* case exists for applying the Acts to any trade, he shall cause a public enquiry to be held into the matter and shall have regard to the report of such enquiry.
- (3) That it be the duty of a Trade Board to fix
 - (a) a general minimum time-rate for the general body of workers in trade, such rate to be fixed with reference to the lowest grade of ordinary workers in the trade;
 - and that a Trade Board be authorised to fix
 - (b) if so authorised by Order of the Minister of Labour, a special minimum time-rate for workers performing work ancillary to that performed by the general body of workers;
 - (c) a piece-work basis time-rate;
 - (d) a guaranteed time-rate for piece-workers;
 - (e) minimum piece-rates for out- or home-workers engaged in piece-work in the trade;
 - (f) overtime rates based upon the above rates;
 - and that such rates when confirmed be enforceable in manner now provided by the Trade Boards Acts.
- (4) That a Trade Board have power to fix
 - (a) special minimum time-rates and piece-work basis time-rates for special classes of workers in the trade or workers engaged in any special process;
 - (b) minimum piece-rates for in-workers;
 - (c) special minimum piece-rates for in-workers to be fixed on the application of an individual employer to apply in respect of workers employed by him;
 - (d) overtime rates based upon the above rates;and to apply for confirmation of such rates, and that such rates if confirmed be recoverable by civil proceedings only.
- (5) That any question arising under the last preceding recommendation be determined by agreement between the members representing employers and the members representing workers, and that for this purpose the assent of not less than three-fourths of the members of either side present and voting on the question (not less than one-half of the members on the side being present) do bind the side.
- (6) That provision be made for enabling the representative members of a Trade Board to refer any difference which may have arisen with regard to any rate proposed to be fixed under the recommendation numbered (4) above to such person or persons as they may appoint.
- (7) That as regards any rate fixed or proposed to be fixed under the above recommendation numbered (4) the provisions of the Corn Production Acts (Repeal) Act, 1921, Section 4, Sub-sections (3) to (5) have effect subject to the modification proposed in paragraph 62 above.
- (8) That as regards any manufacturing or productive trade to which the Acts have been or may be applied, the Minister of Labour be authorised, after consultation with the Trade Board for such trade, to set up for any area a district committee for the regulation of such trade in the area, and that every such committee have the powers conferred by the Acts upon district committees.

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- (9) That where a district trade committee has been established it shall be consulted by the Board before a proposal for a rate affecting the district is made.
- (10) That a Trade Board which has established a district trade committee shall have power at any time to dissolve it.
- (11) That as regards the distributive and retail making-up trades to which the Acts have been or may be applied (including the Laundry Trade), the Minister of Labour be authorised to divide the country into suitable areas and to set up for any area a District Board or District Boards for the regulation of such trades in the area.
- (12) That a co-ordinating committee for each trade or group of trades for which District Boards are so formed be set up.
- (13) That the Trade Boards which have not already adopted this course be recommended in fixing minimum rates for learners to have regard to experience not less than to age and to make suitable provision for late entrants.
- (14) That Trade Boards be recommended in trades where apprenticeship is of value to encourage that system by fixing a minimum rate for apprentices lower than that fixed for learners of the same age.
- (15) That the power of exemption conferred upon Trade Boards by the Acts be extended so as to cover any worker employed in a trade who from age or any other cause is incapable of earning the minimum rate applicable to him.
- (16) That permits of exemption when given may be made retrospective to the date of application.
- (17) That the rates fixed by Trade Boards be subject to confirmation by the Minister as at present, but that the Minister be authorised before confirming any rate or referring it back to a Trade Board for reconsideration, to refer the matter to the Industrial Court for its consideration and advice, or to cause a public enquiry to be held into the matter.
- (18) That the Minister of Labour be authorised to establish a Trade Board for two or more trades and to transfer to any such Board the powers of any existing Board.
- (19) That the Minister of Labour be authorised, on the application of a proprietor of any establishment in which two or more trades to which the Acts apply are carried on, by Order to determine which minimum rates of wages shall apply to the workers or any class of workers in such establishment.
- (20) That the Minister of Labour be authorised, on the application of a trader or of any person concerned, by Order to determine whether any worker or class of workers falls within the scope of an Order under which a Trade Board is established or of a determination made by such a Board.
- (21) That any Trade Board or person aggrieved by any such decision shall have a right of appeal to a Judge of the High Court in manner provided by Section 10 of the Unemployment Insurance Act, 1920.
- (22) That the Minister of Labour be authorised, if he is of opinion that the circumstances of any trade or any branch of a trade to which the Acts apply are of such a character as to render the application of the Acts no longer necessary, by Special Order to withdraw that trade or branch from the operation of the Acts either altogether or for such period and upon such conditions as he may think fit, but that before making any such Order the Minister shall cause a public enquiry to be made into the matter.
- (23) That the Minister be authorised by Order to empower the Lace Finishing Board, and any other Board to which he may consider that similar considerations apply, to fix a minimum remuneration for middle-women.

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- (24) That Trade Boards be authorised to fix a series of minimum rates to come into operation contingently on the occurrence of specified events.
- (25) That Trade Boards be authorised in fixing overtime rates to make the payment of a daily overtime rate conditional on the completion by the workers of a specified number of hours' work in the week, subject to such work being provided by the employer; and also to fix such rates by reference to a different number of hours' work in different districts.
- (26) That the provision which prevents a Trade Board from giving notice of a proposal to vary a rate within six months after it has been fixed, without the consent of the Minister of Labour, be repealed.
- (27) That the period allowed for objections to a proposal for the cancellation or variation of a rate be reduced in the case of a rate specified in the above recommendation numbered (3) to one month, and in all other cases to 14 days, from the date of notice being given of the proposal.
- (28) That the maximum period allowed to the Minister for confirming a cancellation or a variation of a rate or referring it back to the Trade Board be reduced (unless in his opinion there are special circumstances which make a postponement desirable, and excepting when he refers the rate to the Industrial Court or orders a public enquiry to be held) to 14 days.
- (29) That where, as a result of objections to a proposal for a minimum rate, a rate different from the proposed rate is agreed to by not less than three-fourths of the Representative Members on each side of the Board present and voting, not less than one-half of the Members on each side being present, the Minister be authorised (unless he is of opinion that the difference is of so serious a nature that fresh notice of it should be given) to confirm such different rate as the minimum without any further notice thereof being given.
- (30) That when on investigation it is found that an employer is not complying with a compulsory Order, the employer be warned forthwith of the non-compliance.
- (31) That when a magistrate convicts an employer of an offence against the Acts it be the duty of the magistrate to order payment of all arrears incurred within six months before the commencement of the proceedings but without prejudice to his power to order payment of arrears for a longer period.
- (32) That it be the duty of the Minister to obtain an annual report on the working of the Acts and to present the same to Parliament.
- (33) That provision be made for applying the amendments proposed in this Report to the existing Boards.
- (34) That the Trade Boards Acts be repealed and a Consolidating Act containing the necessary amendments be passed.

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The following abbreviations are used:—C.M. = Coal Mines; Compn. = Compensation; E.L. = Employer's Liability; F. & W. = Factory and Workshop; Min. = Minimum; T.B. = Trade Board; W. Compn. = Workmen's Compensation. After the title of manufactured articles (e.g., aerated waters) the words 'making of' or 'manufacture of' may generally be understood.

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